John G. Roberts, Jr., sworn in as Chief Justice of the United States

Justice John Paul Stevens (right) administered both the constitutional and the judicial oaths to John G. Roberts, Jr., in a White House ceremony. Jane Roberts held the Bible for her husband.

John G. Roberts, Jr. was sworn in as the 109th Justice of the Supreme Court of the United States and the 17th Chief Justice of the United States in a ceremony held in the Courtroom on Monday, October 3, 2005. The brief investiture ceremony was held at 9:15 AM. At the conclusion of the ceremony, the Chief Justice was accompanied by Senior Associate Justice John Paul Stevens in the traditional walk down the front steps of the building. Symbolically, the newest member of the Court had made his debut.

The previous Friday, September 29, 2005, John G. Roberts, Jr., had taken the Constitutional Oath in a public ceremony at the White House. On that occasion the Chief Justice was accompanied by his wife and other family members. Justice Stevens administered the oath to his new colleague. During the visit to the White House, Justice Stevens also administered the Judicial Oath to John Roberts in a private ceremony attended by the family of the Chief Justice, and other members of the Supreme Court. Mrs. Jane Roberts held the Bible while her husband took the oaths of service.

New members of the Court take two oaths: the Constitutional Oath given to all federal officials, and the Judicial Oath appropriate to federal judges. In this case, both oaths were administered prior to the investiture so that Chief Justice Roberts could begin work immediately in preparation for the new Court Term.

The first oral arguments of the new Term were delayed half an hour past the usual starting time of 10 AM to allow for the investiture ceremony. At 10:30 AM the October term began with the new Chief Justice presiding.

Immediately following the investiture ceremony, Justice Stevens, (left), the new Chief Justice, and Justice O'Connor visited in Chambers.
A Letter from the President

One of the Society’s most important assets is our membership. Without interested and committed members, it would be impossible for the Society to carry out its mission.

Every voluntary organization has an annual attrition rate. We must recruit a substantial number of new members each year just to maintain our current membership level. Members come from many sources such as attorneys newly admitted to practice in the Supreme Court; the gift shop; and through the encouragement of other legal organizations sympathetic with the work of the Society. The most fruitful source of new members, however, is our state membership effort.

The national membership chair this year is Frank G. Jones of Houston — no relation of mine though I would be proud to claim it. He served in this role for the last half of the fiscal year ending June 30, 2005 and agreed at my urging to continue for the present year. “Frank G.”, is being assisted by Dennis Supplee of Philadelphia as vice chair, and by approximately 60 state chairs (several large states have two or more chairs). It is hoped that by June 30 we will have a total of 6,000 approximately 60 state chairs. It is hoped that by June 30 we will have a total of 6,000.

A membership in the Society is a real bargain. The publications alone justify the relatively modest dues of $50 for the first year and $75 annually thereafter, and there are numerous other attractive features such as the opportunity to attend lectures, seminars and the annual meetings; and a significant discount on purchases from the gift shop. Finally there is the satisfaction of knowing you are part of a worthwhile effort to help educate our fellow citizens about the history and constitutional role of the Supreme Court of the United States.

Please help out. You can do this simply by telling fellow lawyers and others about the Supreme Court Historical Society and inviting them to join. All that a prospect need do is to contact Orazio Miceli at our Washington office. The telephone number is (202) 543-0400; the fax number is (202) 547-7730; and Orazio’s email is micelsichs@aol.com.

Let me express my gratitude to all of them, and to the other state chairs, for their enthusiasm and dedication.

THE TUXEDEO DESCENDENTS

By Franz Jautzen, Collections Manager, Office of the Curator

What’s so unusual about these seven tuxedoed men posing for the camera? They all happen to be direct descendants of seven Chief Justices of the United States, and were among the guests of honor at a banquet held by the American Bar Association in Washington, D.C. on October 22, 1914. The banquet was given in honor of the Supreme Court’s 125th anniversary, and with 850 guests it was reported to have been the largest ever held in Washington. This interesting photo was taken just before the banquet. It is one of several valuable and historic objects recently donated to the Collection of the Supreme Court by Timothy Crowley through the Supreme Court Historical Society.

Standing from left to right are Morison R. Waite, Roger B. Taney Anderson, Arthur M. Rutledge, William Jay, Burwell Keith Marshall, Franklin Chase Hoyt, and Melville W. Fuller Wallace. Mr. Ernest Bradford Ellsworth, a descendant of Chief Justice Ellsworth, was invited but could not attend.

The banquet was even more notable in Supreme Court lore because the sitting Chief Justice, Edward Douglass White, addressed the banquet; then former President William Howard Taft, who would follow White as Chief Justice, presided over the banquet; and Charles Evans Hughes, who would follow Taft as Chief Justice, attended as an Associate Justice.

The banquet was the final event of the Association’s annual convention, and the big drama at that year’s convention was what did not happen. Debate had been widely anticipated on a 1912 resolution that put the association on record as opposing the admission of African-American lawyers, and Moorfield Storey had introduced a resolution to rescind it. Mr. Storey, a well-known Boston attorney, was the president of the NAACP. He would later represent the plaintiffs in the Supreme Court’s 1926 restrictive covenant case Corrigan v. Buckley (271 U.S. 323). But before debate could begin, Virginia lawyer Henry S. George Tucker introduced a surprise resolution that both rescinded the 1912 resolution and stipulated that applicants must begin indicating race and gender on their admission form. Mr. Tucker’s resolution passed, and another decision on whether or not to admit three women who had recently applied for admission was tabled until 1915.

Two nights before, at another banquet which the Court had hosted for the American Bar Association, the hosts were greeted in a most unusual way. When the Justices arrived on the doors of the Pan-American Union Building where the dinner was to be held, they found the gates closed and locked. Then, according to The Washington Post: “The Chief Justice reached through the huge iron gates and banged on the glass door with his cane to attract attention. After some delay, in which the attendants sought assurance that the man at the door really was the Chief Justice and not an intruder, he was admitted.”

New York, co-sponsored a roundtable discussion by former Society and the Robert H. Jackson Center in Jamestown, 31, 1955 Brown v. Board of Education “remedy phase” decision. This stimulating discussion was held in Chautauqua Institution's Elizabeth S. Lenna Hall in Chautauqua, New York, close to Jamestown. The event was planned to honor the 50th anniversary of the decision.

The case that has become known as Brown II was heard during the October Term of the Court in 1955. Written for an unanimous Court, the decision in the case is best known for its decree that the enaction of segregation be completed “with all deliberate speed.” Former clerks who participated in the roundtable discussion were: Gordon B. Davidson (clerk to Justice Stanley Reed); Daniel J. Meador (clerk to Justice Hugo L. Black); Earl R. Pollock (clerk to Chief Justices Fred M. Vinson and then Earl Warren); and E. Barrett Prettyman, Jr. (clerk to Justice Robert H. Jackson and then, following his death, clerk to Justice Felix Frankfurter and then to newly appointed Justice John M. Harlan). The clerks shared memories of not only what the Court decided, but also of their perceptions of how the Justices arrived at the decision in the case.

Professor John Q. Barrett of St. John's University School of Law and the Jackson Center moderated the roundtable discussion. An edited transcript with an introduction by Professor Barrett was published in the Fall 2005 issue of the St. John's Law Review.

The roundtable was one of a trio of Jackson Center events considering Brown II on its 50th anniversary. On May 17, the Jackson Center hosted a lecture by Dr. Ophelia DeLaine Gona. Her father, the Rev. J.A. DeLaine, commenced the South Carolina litigation, Briggs v. Elliott, which became one of the four state school segregation cases consolidated by the Court and decided as Brown. The Honorable William T. Coleman, Jr., a former Secretary of Transportation, was the keynote speaker at the third even, a dinner held the evening of May 18. Secretary Coleman clerked for Justice Felix Frankfurter in 1948. During the 1950s, Coleman was a key member of Thurgood Marshall's NAACP legal team. He played a major role in the team’s desegregation cases, including the Brown case. Secretary Coleman and the clerks who participated in the roundtable discussion were honored at the program following the dinner.

Secretary Coleman served for many years as a Trustee of the Supreme Court Historical Society and now serves as Trustee Emeritus.

During his speech, Secretary Coleman observed that America has come a long way since the Brown Board of Education II decision forced the desegregation of schools, but even so, the true purpose of the case has not yet been fully realized. He observed that the fact that the U.S. has not yet accomplished desegregation is indicative of the resistance exerted by many Americans who actively opposed it. This resistance continued to be evident even after the Court mandated that desegregation move forward with “all deliberate speed.” He noted that in some cases, programs intended to improve the civil rights of African-Americans actually expanded segregation. In the intervening years, economic forces and social issues have created new kinds of segregation.

However, Coleman observed that even though much remains to be done, “our country has made tremendous progress.” In his introduction of Secretary Coleman, Professor Barrett commented that Thurgood Marshall had spoken at the Chautauqua Institution two years after the decision in Brown II was handed down. At the time, Marshall exhibited great optimism for the future.

Secretary Coleman noted that a realistic assessment of the legacy of the Brown decision makes it clear that it is one of the most important Supreme Court decisions in American history. “Anytime you doubt the results, you can just imagine the United States without Brown.”

June 2005 marked the 50th Annual meeting of the Society and provided an opportunity to honor some of the most loyal and long-serving members of the Board of Trustees. A portion of the meeting was reserved to recognize the extraordinary dedication and commitment to the Society of three Trustees: Vincent C. Burke, Jr., Patricia Dwinell Butler, and Peter A. Knowles.

Patricia Dwinell Butler, was honored for thirty years of service. A founding Trustee, she has been actively involved in its work in the intervening years. For many of those years, she served as a member of the Acquisitions Committee, eventually becoming its Chair. In that capacity, she served a need for financial independence to facilitate the purchase of acquisitions and made an initial contribution to create the Acquisitions Fund. She has continued to make additional gifts to that fund and has supported other worthwhile projects. Mrs. Butler has been a wonderful emissary of the Society and its programs.

Two other long-serving Trustees of the Society were singled out for special recognition. Both were elected to Emeritus Trustee status.

Vincent C. Burke Jr., also a founding Trustee of the Society, was elected its first Treasurer in 1973. He has chaired or served on many Committees in the last thirty years, both in his capacity as Treasurer and as a Vice President. His dedication to the Society has been exemplary, not only in duration, but in quality and depth. Mr. Burke has been of particular help in bringing the Society's programs to the attention of major foundations. His departure from the active Board was softened by the election of his son, Vincent C. Burke III, as a Vice President.

One of Mr. Burke's most important contributions to the work was his introduction of his associate, Peter A. Knowles, to the Society. Mr. Knowles was appointed Assistant Treasurer of the Society in 1980, working closely with Mr. Burke. He succeeded Mr. Burke as Treasurer in 1981, and held that position through 1996. His lengthy service as Treasurer makes him one of the longest-serving officers in the history of the Society. In addition, Mr. Knowles is a life member. All three of these Trustees have made enormous contributions to the development of the Society that cannot be conveyed through the recitation of statistics alone. It is a great pleasure to recognize their dedication, vision, devotion and commitment to the Society and the Court.

Mrs. Patricia Dwinell Butler received a special award from Justice O'Connor, commemorating Mrs. Butler's thirty years of service as a Trustee.
Chief Justice John Marshall is credited with giving meaning to the Constitution, through interpretive decisions during his three decades on the Bench.

Professor Jean Smith, author of John Marshall: Defender of a Nation, was the keynote speaker at a celebration in 2000, and provided the rationale for Marshall's election in 1800, and provided the rationale for his country and Congress as his government. "I had imbibed the sentiments so thoroughly that they constituted a part of my being." Unlike Mr. Jefferson, Marshall became an American before he had time to become a Virginian.

Marshall served with General Washington at Valley Forge. Wartime service brought to the Court when he was appointed chief justice in 1790. It might be noted some of the characteristics John Marshall had little opportunity for formal schooling, but read at home as a child under the tutelage of his parents. He taught himself Greek and Latin, and mastered many of the classics. His elegant prose was admired for its clarity, of warmth and intellect, that helped Marshall convert the Constitution the Framers conceived it; the first instance from his experience as a front-line soldier—a thrill of people, said Marshall, of my being." Unlike Mr. Jefferson, Marshall became an American before he had time to become a Virginian.

TRIBUTE TO JOHN MARSHALL
ON THE 250TH ANNIVERSARY OF HIS BIRTH
Professor Jean Smith

After the war Marshall attended the law lectures of Chancellor George Wythe at William and Mary. This was the first formal program in legal education offered in the United States and Marshall excelled. His law notebook, a 239-page statement of the law in Virginia, is the only source material that survives documenting the nature of legal education in the last quarter of the 18th Century.

Within ten years of completing his studies at William and Mary, Marshall had become the leading appellate lawyer in Virginia. He was a personal lawyer for George Washington, James Madison and George Mason, and served as the principal lawyer for most Virginians in the British debt cases in the 1790s. (Those were the suits instituted by British creditors to obtain payment for debts incurred by Americans before the Revolution.)

In 1788 he played a pivotal role at the Virginia ratification convention and at its conclusion worked closely with Patrick Henry and James Madison to draft the Bill of Rights—the first ten amendments to the Constitution, which were added in 1790. At the beginning of his administration, President Washington sought to appoint Marshall United States Attorney General for Virginia, then asked him to become Attorney General, then minister to France, all of which Marshall declined. Eventually President Adams induced him to go to Paris to negotiate at the naval war with France—an assignment that culminated with the famous XYZ affair in which Marshall refused to pay a bribe to French Foreign Minister Talleyrand. Marshall returned to a hero's welcome in Philadelphia. The famous toast, "Millions for defense, but not one cent for tribute," was offered in his honor. He was elected to Congress in 1798 and immediately became the leader of the moderates in both parties attempting to tamp down the partisanship that had engulfed the nation. When Adams purged his cabinet of the High Federalists in 1800, he made Marshall Secretary of State, and when Oliver Ellsworth resigned as Chief Justice in 1801, Adams named Marshall to replace him.

In 1801, Adams's term was about to expire and he had to name someone quickly, otherwise the appointment would fall to Mr. Jefferson. Adams initially offered the post to John Jay, who had been the nation's first Chief Justice. Jay was governor of New York at the time, and had no desire to return to the bench. He told Adams that the Supreme Court was so difficult, he would never amount to much: in Jay's words, it would "never obtain the energy, weight, and dignity to acquire the public confidence and respect which is essential."

Jay sent his reply to Marshall who was Secretary of State at the time. Bear in mind we are talking about 1801 when the mail was very slow. For Adams, time was running out. Let me quote what Marshall wrote about the episode:

When I waited on the President with Mr. Jay's letter declining the appointment he said thoughtfully, "Who shall I nominate now?" I replied I could not tell. After a moment's reflection he said, "If you must nominate now," I replied, "I believe I must nominate you." I had never before heard myself mentioned for the office and had not even thought of it. I was pleased as well as surprised, and bowed in silence. Next day I was nominated.

Continued on page 8
There is no evidence that the President had calculated the move beforehand. The pace of events forced the choice. Adams simply could not delay naming a new Chief Justice if the Federalists were to retain control of the Court. Many years later Adams wrote, "the proudest act of my life was the gift of John Marshall to the people of the United States." Yet Marshall's appointment was clearly a product of circumstances, not prior deliberation.

The Senate did not hold any hearings. The Democrats, Mr. Jefferson's party, applauded Marshall's appointment, and it was the High Federalists, the doctrinaire right wing of the Federalist party, who objected. Marshall, they thought, was too conciliatory; that he was not ideologically committed to the Federalist cause. And they held up the appointment for a week to pressure Adams into withdrawing Marshall's name. When Adams refused, Marshall was confirmed unanimously.

The Supreme Court of the United States is accepted today as the ultimate interpreter of the Constitution. That was not the case in 1801. For the first year and a half of its existence the Court did not decide a single case. Between 1790 and 1800 only 63 cases were reported, less than a dozen of which were noteworthy. Even the Court's authority to interpret the Constitution was unclear.

Article III of the Constitution defines the Supreme Court as a court of law, not a constitutional court. Its jurisdiction is limited to cases in law and equity. There is no explicit constitutional mandate.

Constitutions are political documents. They are not necessarily legal documents. They define the way a nation is governed. Their interpretation traditionally rests with the political branches of government: with the legislative and executive; with Parliament and the Crown. That was the British practice with which the Framers were familiar, and it was also the American practice in 1800. Congress's authority to interpret the Constitution rested on the English tradition of parliamentary supremacy. The executive's authority derived even justiciable in a court of law was problematic.

The problem of leadership was particularly acute. When the Court moved from Philadelphia to Washington in 1800, no provision was made for the Court to be housed. Eventually a small room was located on the ground floor of the Capitol, which the Capitol's architect described as "a noisy, half-finished committee room, meanly furnished, and very inconvenient." The Court had no library, no office space, no clerks, no secretaries. Even the Court reporter had resigned because he didn't want to move from Philadelphia to Washington.

Before Marshall joined the Court, the justices (and there were six in those days) wrote their own opinions and delivered them individually—just as the Justices of King's Bench. Marshall changed that. His first act upon becoming Chief Justice was to arrange for his colleagues to live in the same hotel. The Court met only six weeks a year in those days, and the Justices came to Washington without their wives. Under Marshall's benign leadership the Justices socialized together, walked to and from the Court together, and when they socialized in Washington they usually did so together.

Oral arguments were far more important in those days—"a noisy, half-finished committee room, meanly furnished, and very inconvenient." The Court had no library, no office space, no clerks, no secretaries. Even the Court reporter had resigned because he didn't want to move from Philadelphia to Washington.

Following Jay's resignation from the Supreme Court, Washington offered the post to Alexander Hamilton (shown here as a Captain of artillery in the Revolutionary War). He declined, deeming the Court an unworthy of his time.

So lightly was the Supreme Court regarded that when the government moved from Philadelphia to Washington in 1800, no provision was made for the Court to be housed. Eventually a small room was located on the ground floor of the Capitol, which the Capitol's architect described as "a noisy, half-finished committee room, meanly furnished, and very inconvenient." The Court had no library, no office space, no clerks, no secretaries. Even the Court reporter had resigned because he didn't want to move from Philadelphia to Washington.

Before Marshall joined the Court, the Justices (and there were six in those days) wrote their own opinions and delivered them individually—just as the Justices of King's Bench. Marshall changed that. His first act upon becoming Chief Justice was to arrange for his colleagues to live in the same hotel. The Court met only six weeks a year in those days, and the Justices came to Washington without their wives. Under Marshall's benign leadership the Justices socialized together, walked to and from the Court together, and when they socialized in Washington they usually did so together.

Oral arguments were far more important in those days—"a noisy, half-finished committee room, meanly furnished, and very inconvenient." The Court had no library, no office space, no clerks, no secretaries. Even the Court reporter had resigned because he didn't want to move from Philadelphia to Washington.

So lightly was the Supreme Court regarded that when the government moved from Philadelphia to Washington in 1800, no provision was made for the Court to be housed. Eventually a small room was located on the ground floor of the Capitol, which the Capitol's architect described as "a noisy, half-finished committee room, meanly furnished, and very inconvenient." The Court had no library, no office space, no clerks, no secretaries. Even the Court reporter had resigned because he didn't want to move from Philadelphia to Washington.

Before Marshall joined the Court, the Justices (and there were six in those days) wrote their own opinions and delivered them individually—just as the Justices of King's Bench. Marshall changed that. His first act upon becoming Chief Justice was to arrange for his colleagues to live in the same hotel. The Court met only six weeks a year in those days, and the Justices came to Washington without their wives. Under Marshall's benign leadership the Justices socialized together, walked to and from the Court together, and when they socialized in Washington they usually did so together.

Oral arguments were far more important in those days—"a noisy, half-finished committee room, meanly furnished, and very inconvenient." The Court had no library, no office space, no clerks, no secretaries. Even the Court reporter had resigned because he didn't want to move from Philadelphia to Washington.

So lightly was the Supreme Court regarded that when the government moved from Philadelphia to Washington in 1800, no provision was made for the Court to be housed. Eventually a small room was located on the ground floor of the Capitol, which the Capitol's architect described as "a noisy, half-finished committee room, meanly furnished, and very inconvenient." The Court had no library, no office space, no clerks, no secretaries. Even the Court reporter had resigned because he didn't want to move from Philadelphia to Washington.

Before Marshall joined the Court, the Justices (and there were six in those days) wrote their own opinions and delivered them individually—just as the Justices of King's Bench. Marshall changed that. His first act upon becoming Chief Justice was to arrange for his colleagues to live in the same hotel. The Court met only six weeks a year in those days, and the Justices came to Washington without their wives. Under Marshall's benign leadership the Justices socialized together, walked to and from the Court together, and when they socialized in Washington they usually did so together.

Oral arguments were far more important in those days—"a noisy, half-finished committee room, meanly furnished, and very inconvenient." The Court had no library, no office space, no clerks, no secretaries. Even the Court reporter had resigned because he didn't want to move from Philadelphia to Washington.

So lightly was the Supreme Court regarded that when the government moved from Philadelphia to Washington in 1800, no provision was made for the Court to be housed. Eventually a small room was located on the ground floor of the Capitol, which the Capitol's architect described as "a noisy, half-finished committee room, meanly furnished, and very inconvenient." The Court had no library, no office space, no clerks, no secretaries. Even the Court reporter had resigned because he didn't want to move from Philadelphia to Washington.

Before Marshall joined the Court, the Justices (and there were six in those days) wrote their own opinions and delivered them individually—just as the Justices of King's Bench. Marshall changed that. His first act upon becoming Chief Justice was to arrange for his colleagues to live in the same hotel. The Court met only six weeks a year in those days, and the Justices came to Washington without their wives. Under Marshall's benign leadership the Justices socialized together, walked to and from the Court together, and when they socialized in Washington they usually did so together.

Oral arguments were far more important in those days—"a noisy, half-finished committee room, meanly furnished, and very inconvenient." The Court had no library, no office space, no clerks, no secretaries. Even the Court reporter had resigned because he didn't want to move from Philadelphia to Washington.

So lightly was the Supreme Court regarded that when the government moved from Philadelphia to Washington in 1800, no provision was made for the Court to be housed. Eventually a small room was located on the ground floor of the Capitol, which the Capitol's architect described as "a noisy, half-finished committee room, meanly furnished, and very inconvenient." The Court had no library, no office space, no clerks, no secretaries. Even the Court reporter had resigned because he didn't want to move from Philadelphia to Washington.

Before Marshall joined the Court, the Justices (and there were six in those days) wrote their own opinions and delivered them individually—just as the Justices of King's Bench. Marshall changed that. His first act upon becoming Chief Justice was to arrange for his colleagues to live in the same hotel. The Court met only six weeks a year in those days, and the Justices came to Washington without their wives. Under Marshall's benign leadership the Justices socialized together, walked to and from the Court together, and when they socialized in Washington they usually did so together.

Oral arguments were far more important in those days—"a noisy, half-finished committee room, meanly furnished, and very inconvenient." The Court had no library, no office space, no clerks, no secretaries. Even the Court reporter had resigned because he didn't want to move from Philadelphia to Washington.
Continued from page 9

Marshall tried the Burr case on circuit. In those days circuit included Virginia, including that portion that became West Virginia, and North Carolina. Twice a year he would travel by horse and buggy over the meanest backcountry roads to hold court in North Carolina. In Marshall’s time, all the federal litigation in the circuit was handled by Marshall, aided by a district judge in Richmond, and another district judge in Raleigh. Today, by contrast, litigation in the 4th Circuit requires (in addition to the Chief Justice) 15 appeals court judges, 76 district court judges, 24 bankruptcy judges, and 59 magistrate judges—a total of 155 federal judges versus 3 in Marshall’s time.

Marshall was a man for all seasons. In 1812 the Virginia legislature commissioned him to prepare a report on the advantages of linking the James River with the Ohio. I don’t believe anyone in the Virginia legislature expected Marshall to lead the survey, but at the age of 57, having been Chief Justice of the United States for 11 years, Marshall personally led a survey party of 20 men up from the headwaters of the James and Cowpasture Rivers, across the Appalachians, down the Greenbrier and New Rivers to the Kanawha and the Ohio. The survey took three months and mapped a 250-mile note that roughly became the path of the C & O Railroad and Interstate 64.

In 1830, Marshall missed the first two weeks of the Supreme Court’s term to attend the Virginia constitutional convention to which he had been elected as the delegate from Henrico County, and Marshall’s masterly defense of judicial independence at the convention preserved the tenure of Virginia’s judges. “I have always thought,” said Marshall, “that the greatest scourge an angry Heaven ever inflicted upon an ungrateful and sinning people was an ignorant, a corrupt, or a dependent judiciary.” And I should add that it was at that 1830 Virginia convention that John Laidley of Cabell County met Marshall and returned to Huntington, West Virginia to found Marshall University in his honor.

Marshall brought to the Supreme Court not only a rare combination of warmth and intellect, but a modesty and self-deprecation that was unusual. “The first impression of a stranger,” Justice Story wrote, “was generally one of disappointment. It hardly seemed credible that such simplicity should be the accomplishment of such acknowledged greatness.”

Meet him on a stagecoach, as a stranger, and travel with him the whole day, and you would only be struck by his readiness to administer to the accommodations of others and his anxiety to appropriate to himself. Be with him, the unknown guest at an inn, and he seemed adjusted to the very scene, resigning himself without complaint to the meager arrangements. You would never suspect, in either case, that he was a great man; far less that he was the Chief Justice of the United States.

Marshall’s decisions over the 35 years he was Chief Justice set the nation on a path of development from which it never deviated. Many of those decisions in the aura of authority he imparted to the Court. Sir Lewis Namier, the great English scholar, once observed that historians often forget the present but forget the past. And we often forget the republic of the United States was an unprecedented experiment. As former British subjects we had no legacy of an independent judiciary and no heritage of judicial review. Marshall changed that.


On July 8, as Marshall’s funeral cortège made its way through the city, the muffled bells of Philadelphia tolled their mournful message. Suddenly, as if by fate, the greatest of all bells, the Liberty Bell in Independence Hall, began to make strange sounds. It had cracked telling the death of the Great Chief Justice. It would never ring again.

FRANKLIN CHASE HOYT AND PROHIBITION

Franklin Chase Hoyt, (whose picture appears in the group photograph on the bottom of page 3 of this issue of The Quarterly) was the grandson of Salmon P. Chase. He was the subject of an article that appeared in Time Magazine on June 10, 1929 under the headline: “Act of God.” It reported that Hoyt, described as “a Manhattan jurist”, was the recipient of a prize in the amount of $25,000 for a temperance essay contest. The contest was sponsored, and the cash prize paid, by publisher William Randolph Hearst.

Hoyt’s prize-winning suggestion was to leave the 18th Amendment (the amendment approving Prohibition) untouched, and instead change the language of the Volstead Act. The Act was passed to provide for the enforcement of the amendment, placing the primary responsibility on the Commissioner of Internal Revenue, his assistants, agents, and inspectors, “referred to in slang as ‘Revenuers.’” Hoyt proposed amending the Act to permit the legal consumption and possession of beverages that became alcoholic through the process of natural fermentation, rather than through manufacture. Hoyt described the fermentation process as an “act of God,” to differentiate it from man-made processes. His choice of words describing the exception inspired the title of the magazine article.

Hoyt’s proposal was chosen from a field of 58 final entries, but the finalists had been culled from an initial field of 71,348. Indeed, Hoyt’s proposal was initially identified as entry #21, 182, presumably referring to the order in which the contest entries had been received. The proposals varied in length from only one word. (“Water”) to a tome of 90,000 words. In a magazine account of the story, Hoyt was reported as predicting that the repeal of prohibition at any time in the near future was “a flat impossibility. The repugnant proposal to permit States to dispense liquor will never prove acceptable.”

At the time he won the prize, Hoyt served as the Chief Justice of the New York City Children’s Court. During his time on that bench, he commented frequently on the number of problems before his Court caused by alcohol abuse.

In September 1935, President Roosevelt appointed him to oversee the Federal Alcohol Administration. Perhaps ironically Hoyt’s earlier statements, he became the head of the new agency charged with supervising the manufacture and sale of alcoholic beverages and of other commercial products containing alcohol.
The Honorable J. Harvie Wilkinson, III delivered the Thirtieth Annual Lecture. Judge Wilkinson sits on the Fourth Circuit Court of Appeals.

Monday June 5, 2005, marked another milestone for the Supreme Court Historical Society; the celebration of the 30th Annual Meeting. Following the protocol set in the first years of the meeting, the opening event of the day was the Annual Lecture. In the early years, the Annual Lecture was held in the Restored Supreme Court Chamber in the US Capitol Building. This venerable chamber was a particularly fitting location for the program, but with a seating capacity of no more than 100, the growth of membership and activity in the Society necessitated the event be relocated. During the years the event was held in the old chamber it was the backdrop for a number of outstanding presentations, including an address by Justice Scalia, given prior to his appointment to the Supreme Court. In a foreshadowing of things to come, then-Judge Scalia's associate from the Court of Appeals, Judge Wilkinson presented a stimulating and thought-provoking speech. As is customary, the text of his remarks will appear in a forthcoming issue of the Journal of Supreme Court History.

As an added benefit for those in attendance, members and their guests had the opportunity to tour the Supreme Court Building at the conclusion of the Lecture. Tours were conducted under the direction of the Office of the Curator of the Court, and provided a background on the history of the Court, the architecture and iconography of the building, and an opportunity to view the areas of the Building not accessible to the average visitor to the Court.

Business meetings of the General Membership and the Board of Trustees were held in the Supreme Court Chamber in the evening. President Frank Jones and Chairman of the Board Leon Silverman presided over the meetings and provided short reports on the status of the Society.

The 30th Annual Lecture was delivered in the Supreme Court Chamber by the Honorable J. Harvie Wilkinson III of the U.S. Court of Appeals for the Fourth Circuit. His topic was “Public Understanding of the Court and the Judiciary System.” Judge Wilkinson received a B. A. from Yale University where he was elected to Phi Beta Kappa, Magna Cum Laude, and was Scholar of the House with exceptional distinction. He received his JD from the University of Virginia where he was on the Law Review. After completing law school he served as a law clerk to Justice Lewis F. Powell, Jr. for the 1975-76 Term. He then pursued a teaching career at the University of Virginia for approximately ten years. He entered public service as Deputy Assistant Attorney General, Civil Rights Division, at the Department of Justice, and was appointed Circuit Judge for the US. Court of Appeals in the Fourth Circuit in August 1984. Judge Wilkinson’s wife, son and daughter attended the speaking. To a capacity audience, Judge Wilkinson presented a stimulating and thought-provoking speech. As is customary, the text of his remarks will appear in a forthcoming issue of the Journal of Supreme Court History.

One of the most important purposes of the Annual business meetings is the election of officers and members of the Board of Trustees. Nominations to office were made by Virginia Daly acting in her capacity as Secretary of the Society and Chair of the Nominating Committee. The first elections concerned individuals nominated to serve on the Board of Trustees. The following were nominated to serve an additional three-year term as a member of the Board: Sheldon S. Cohen, Virginia Warren Daly, William Edlund, Charles O. Galvin, Robert A. Gwinn, Frank C. Jones, Robert Juceam, Mrs. Thurgood Marshall, Stephen McAllister, Gregory Michael, Joseph Modernow, E. Barrett Prestynnan, Jr., Bernard Reese, Jerold Solovy and Kenneth W. Starr.

New Trustees elected to an initial three-year term of service are: Martha Barnett, David Frederick, Allen Hill, Frank G. Jones, Gregory Joseph, Kathleen McCree Lewis, Joan Lukey, Rick D. Nydegger, Theodore B. Olson, David Onorato, Richard A. Schneider and David Scott. In recognition of long and loyal service, four individuals were nominated to serve as Trustees Emeriti. They were: Vincent C. Burke, Jr., Peter A. Knowles, Vincent J. McKinnock and Lively Wilson. All candidates were elected by unanimous vote.

Immediately following the Annual Meeting of the General Membership of the Society, Chairman Leon Silverman convened the Annual Meeting of the Board of Trustees. Mr. Silverman welcomed the Board members, staff and their guests and provided a background on the history of the Society, which led to the attainment of the Society, observing that the Trustees and Officers of the organization include some of the greatest legal scholars and practitioners of our time. Their participation in the Society brings great honor and credit to the organization, and their expertise is reflected in the outstanding contributions of time and substance to the work of the Society during the past year.

As mentioned earlier in the meetings, the single most noteworthy development of the year was passage of the legislation authorizing the minting of the John Marshall Commemorative Silver dollar. (see Quarterly for an article about the launch event associated with the minting of the coin.) As of the date of the annual meeting, approximately 88,000 coins had been sold. Ralph I. Lancaster spearheaded the committee that worked to obtain passage of the John Marshall Commemorative Coin Act, and Mr. Jones recognized his contribution. Michael Cooper, a member of the Ad Hoc Coin Committee, was elected to the Board of Trustees. Mr. Cooper was recognized in a special presentation recognizing Mr. Lancaster’s Herculean efforts. Mr. Cooper had compiled a record of much of the correspondence between Mr. Lancaster and his Ad Hoc Coin Committee members. The bound leather volume of correspondence between Mr. Lancaster and his committee members was presented to the Board.

As of the date of the annual meeting, approximately 88,000 coins had been sold. Ralph I. Lancaster spearheaded the committee that worked to obtain passage of the John Marshall Commemorative Coin Act, and Mr. Jones recognized his contribution. Michael Cooper, a member of the Ad Hoc Coin Committee, was elected to the Board of Trustees. Mr. Cooper was recognized in a special presentation recognizing Mr. Lancaster’s Herculean efforts. Mr. Cooper had compiled a record of much of the correspondence between Mr. Lancaster and his Ad Hoc Coin Committee members. The bound leather volume of correspondence between Mr. Lancaster and his committee members was presented to the Board.

Ralph I. Lancaster’s outstanding efforts as Chair of the Ad Hoc Coin Committee were recognized on June 5.

Michael Cooper received an award on behalf of Sullivan & Cromwell. He was an essential member of the Ad Hoc Coin Committee.
Edward (Ned) Carpenter, received a reward from Justice O'Connor in recognition of the generous support of the Good Samaritan Foundation was presented as a tangible reminder of Mr. Lancaster's tenacity and perseverance on the project. In addition, Justice O'Connor assisted in presenting a framed seal of the Supreme Court to Mr. Lancaster in recognition of his dedication to the work of the Society in preserving the history of the Court.

Following the presentation of those special awards, President Jones recognized the contributions made by Frank G. Jones, who has worked tirelessly since his appointment mid-year as National Membership Chair. Business commitments prevented his attendance, but his hard work was acknowledged.

Assisted by Justice O'Connor, President Jones presented awards to State Chairs who had successfully met their goals in promoting membership in the Society within their home states. Those present and recognized at the Annual Meeting were: J. Bruce Alverson, Nevada; Frank P. Doheny, Kentucky; James Falk, Jr., Washington, DC 1; Robert Gwinn, Texas-Massachusetts 2; Charles Douglas, Illinois; James M. Lyons, Colorado 1; Michael Mone, Massachusetts 1; Michael W. Smith, Virginia; Shaun S. Sullivan, Connecticut 1.

Several other state chairs had achieved their goals by June 5, but were unable to attend. They were: Richard A. (Doc) Schneider, Georgia; R. Bruce Shaw, South Dakota; Wayne J. Mark, Nebraska; Rick Nydegger, Utah; Edward (Ned) Carpenter, Oklahoma 2005; John Tucker, Oklahoma 2004; James Wyrsch, Missouri-West. Those present and recognized at the Annual Meeting were: J. Bruce Alverson; Vincent C. Burke III and the J. Bruce Alverson Foundation; Ned Carpenter and the Good Samaritan Foundation; Fried Frank; Jerome Libin, Sutherland Asbill & Brennan; Rick Nydegger of Workman Nydegger; and Richard (Doc) Schneider of King & Spalding.

Special donors to the Society were honored for personal contributions, and for those of foundations. Those recognized were: J. Bruce Alverson; Vincent C. Burke III and the Clark Winchell Foundation; Ned Carpenter and the Good Samaritan, Inc.; Michael A. Cooper; Virginia Daly; James Goldman; Robert Juceam and Fried Frank Shriver & Jacobson; Jerome Libin and the Park Foundation; Steve McAllister and the University of Kansas; Gregory Michael; Joseph Modern; Rick Nydegger and AIPFA; Dwight D. Opperman; Bernard Reese; Jay Sekulow and the American Center for Law and Justice; Agnes Williams; Donald Wright; and William Yarborough.

At the conclusion of the awards ceremony, the Meeting of the Board of Trustees was adjourned until 2006. Those holding reservations for the Reception and Dinner then adjourned to the East and West Conference Rooms where they enjoyed the opportunity to meet and visit with other members of the Society and invited guests. During the reception, string quartets from the U.S. Air Force Band provided beautiful chamber music.

Dinner was served in the Great Hall. Flags from each of the fifty states, as well as a large flag of the United States suspended near the front entrance, decorated the room. These flags were provided through the courtesy of the Military District of Washington. Mr. Jones welcomed those present to the dinner, thanking Justices O'Connor, Thomas, Ginsburg, and Breyer for their attendance. He acknowledged the absence of Chief Justice Rehnquist, expressing best wishes for his recovery, and then called upon Justice O'Connor to make the traditional toast to the President of the United States before dinner was served.

After-dinner entertainment was introduced by Annual Meeting Chair Charles Cooper. Mr. Cooper then introduced the program for the evening. The Singing Sergeants is one of the premier choral organizations in the world today. The official chorus of the United States Air Force, the positions are filled by auditions only and are reserved for those singers who demonstrate the finest qualities of musicianship and vocal production. Their repertoire includes vocal music from opera, traditional and contemporary choral literature, oratorio, folk songs, pop standards, musical theater and jazz, with an emphasis on the choral music of America. Presenting the music of America to the people of the world, the chorus has appeared in the White House, the Supreme Court, major concert halls and before millions of people in live performances and countless more on radio and television programs. Under the direction of Captain Cristina Moore Urrutia, the Singing Sergeants performed an outstanding concert.

At the conclusion of the concert, Mr. Cooper thanked the Singing Sergeants and the musicians of the U.S. Air Force Band string quartets for their considerable contributions to the evening. The meeting was adjourned until June 5, 2006.

Panel Discussion Planned to Review The West Virginia State Board of Education v. Barnette Decision

The Supreme Court Historical Society and the Robert H. Jackson Center will partner again to sponsor a panel examining the Court's decision in West Virginia State Board of Ed. v. Barnette. The program will take place April 27-28, 2006 at the Jackson Center in Jamestown, New York. Participants will include the Barnette sisters, and Bennett Bosley who served as a law clerk to Chief Justice Harlan Fiske Stone. Other participants will include Professor Shawn Francis Peters, a professor of journalism and mass communications, the author of Judging Jehovah's Witnesses. In the book he discusses the Barnette case as part of the legal campaign, focusing on First Amendment rights, waged by the Witnesses between 1938 and 1946. Professor John Q. Barrett, Jackson Center Fellow, will also participate. A dinner will be held on the evening of April 27 honoring participating, and the roundtable discussion will be held the morning of April 28. Further information can be obtained by visiting the Society's website, supremecourthistory.org, or by contacting the Robert H. Jackson Center at (716) 483-6646.
2005 SUPREME COURT SEMINAR FOR TEACHERS

By Megan Hanson

Begun in 1995, the Supreme Court Institute for Teachers has now completed its 11th successful year. For this program, the Society partners with Street Law, a non-profit educational organization dedicated to providing practical, participatory education about law, democracy and human rights. The Institute provides participants with an immersive, in-depth study of the operation of the Supreme Court, bringing to Washington 60 secondary teachers in the subjects of law, government and civics to participate in a six-day seminar. The teachers attend in two groups of 30 each—the first session this year was held from June 16-21, and the second from June 23-28. Participants are selected from all parts of the country, and this geographical variety provides an added richness to the experience. Guided by facilitators Lee Arbetman of Street Law, Inc., Professor Diana Hess from the University of Wisconsin, and Professor Barbara Perry from Sweet Briar College, the teachers investigate the operations, significance and history of the Court. They study key cases from the current term, learn about the judicial nominations process, prepare for and conduct a moot court, listen to decisions in the Courtroom and attend a reception at the Court.

The most powerful aspect of the Institute is the role that resource people—legal experts, political commentators, court watchers, journalists and educators—play in the learning experience. The participation of these experts is vital to the Institute and provides the participants with knowable insight, firsthand experiences and a special educational experience. Last summer’s special resource instructors included among others, Judge John Roberts, now Chief Justice of the United States; Maureen Mahoney, a partner at Latham & Watkins; Washington Post reporter Charles Lane; Richard Katskee, Assistant Legal Director for Americans United for Separation of Church and State; Georgetown Law Professor Michael Seidman; Catholic University Law Professor Bob Destro; Jay Sekulow, of American Center for Law and Justice; Supreme Court Historical Society and a prominent Supreme Court advocate. In many instances, the participants from the second week of the Institute prepare to serve as justices in the moot court. The session was conducted in Georgetown Law Center’s Supreme Court Moot Courtroom. In his time with the teachers, Mr. Katskee was able to convey to them the excitement and intensity that goes into preparing a case for the Supreme Court while knowing that the decision is going to shape the law for years to come. Well qualified and able to help the teachers break down the arguments presented in the case, the legal reasoning behind the decisions, and the precedents involved, he was obviously a powerful resource for the teachers. He says, however, that he learned a lot from them as well. Mr. Katskee was impressed with the teachers’ ability to navigate the legal arguments and make connections to their lives, as well as their interest in, and commitment to, learning about the Supreme Court.

Maureen Mahoney, partner at Latham & Watkins, was also a resource person at this summer’s Institute, delivering the “Introduction to Supreme Court Practice” address at the beginning of the second group’s week. As a trustee of the Supreme Court Historical Society and a prominent Supreme Court advocate, Mrs. Mahoney was a valued resource for the educators. She also found the experience rewarding, primarily because the teachers were so enthusiastic and eager to learn about the operation and importance of the Supreme Court. She described the process of preparing a case before the Court and the preparation for arguing a case, respectively. Mrs. Mahoney was able to impart both her love of advocacy and respect for the Court while sharing personal anecdotes and stories. About half of her time was devoted to fielding questions from the teachers.

Chief Justice John Roberts has been participating in the program since its inception 11 years ago. He began delivering the “Introduction to Supreme Court Practice” session, when he was a litigator with Hogan and Hartson, and continued to participate in the program through his time on the US Court of Appeals for the District of Columbia. Chief Justice Roberts has expressed interest in a continued involvement with the program, telling the Senate Judiciary Committee that the Institute is one of the activities he is “most committed to,” saying he finds it, “very, very fulfilling.”

A glance at the evaluations of the 2005 Supreme Court Summer Institute for Teachers reveals just how much the teachers gain from the involvement of these resource experts. Many participants expressed their surprise and gratitude at the caliber of the instructors and praised their accessibility. One teacher noted that the resource people helped to “break the more esoteric processes into laymen’s terms,” while another noted that the “perspectives were enlightening.” They repeatedly said that the participation of the resource people was a highlight of the Institute; “each [speaker] was more impressive than the previous, they represented both sides of the spectrum and many aspects of the court...” Another commented that “the accessibility to professionals who are actively involved in the Supreme Court was absolutely amazing.”

The capstone of the experience of the teachers in each session is a reception held at the Supreme Court. As she has every year since the program’s inception, Justice Sandra Day O’Connor hosted one of the receptions. She spoke about the critical role teachers play, expressing appreciation for their contributions. Justice Stephen G. Breyer hosted a reception for the second session of the Institute. He noted the importance of a well-informed public in the success of democracy, and touched on the importance of understanding what has happened in the past and how that influences the present and the future. Society Trustee, Mrs. Thurgood Marshall, introduced each Justice at the receptions. Both Justice O’Connor and Justice Breyer commented in the separate receptions they hosted, on the many contributions made by the late Thurgood Marshall, both as an advocate for civil rights before the Supreme Court, and as a member of the Court. During the receptions, the Justices and Mrs. Marshall met and talked with many of the teachers. This unique opportunity to meet people who have witnessed and participated in the making of history, was another highlight of the seminar sessions.

The 2005 participants returned home in late June armed with an arsenal of resources, lesson ideas, teaching methods and new understanding of the Supreme Court’s operation, importance, and role in our legal system. The participation of this year’s teachers brings the number of educators trained by the program to 600. These teachers, as a result of the program, then train other educators. All told, their education on the Court has helped the Institute alumni to reach tens of thousands of students across the country.

Megan Hanson is a Program Coordinator for U.S. Programs at StreetLaw and is responsible for the logistics of The Supreme Court Summer Institute.
In the interest of preserving the valuable history of the highest court, The Supreme Court Historical Society would like to locate persons who might be able to assist the Society’s Acquisitions Committee. The Society is endeavoring to acquire artifacts, memorabilia, literature and any other materials related to the history of the Court and its members. These items are often used in exhibits by the Court Curator’s Office. If any of our members, or others, have anything they would care to share with us, please contact the Acquisitions Committee at the Society’s headquarters, 224 East Capitol Street, N.E., Washington, D.C. 20003 or call (202) 543-0400. Donations to the Acquisitions fund would be welcome. You may also reach the Society through its website at www.supremecourthistory.org.
The 2005 Chief Justice John Marshall Silver Dollar commemorates the 250th anniversary of the birth of the Great Chief Justice. The coins will only be minted through the end of calendar year 2005.

You can support the Society and be a part of history by purchasing coins. The Society will receive a portion of the sales price for every coin sold. Coins can be purchased through the Society's Gift shop. Pricing was set by the Mint in conformance with their requirements, and as a result, the customary member discount is not available. However, members can still purchase coins through the Society at a savings of approximately $4 per coin. To place an order at the member price, call the Gift Shop at (202) 554-8300, or toll free at (888) 539-4438, by fax at (202) 554-8619 or by visiting the website at www.supremecourthistory.org.

John Marshall Coin & Chronicle Set
In addition to the single coin options in both proof and uncirculated condition, this commemorative coin is also available as part of this limited edition set, which includes a Chief Justice John Marshall Uncirculated Silver Dollar, a Bureau of Engraving & Printing intaglio print of William Wetmore Story's 1884 sculpture depicting the Chief Justice seated in the robes of the Court and a revealing booklet on the life of Chief Justice John Marshall, written by the Supreme Court Historical Society. The slipcase includes Certificates of Authenticity from both Henrietta Holsman Fore, Director of the United States Mint, and Tom Ferguson, Director of the Bureau of Engraving & Printing. This product is limited to 25,000 units.
Item # 051454 $59.95 Members $59.95

Supreme Court Historical Society
224 East Capitol Street, N.E.
Washington, D.C. 20003
www.supremecourthistory.org