



THE SUPREME COURT HISTORICAL SOCIETY

Quarterly

VOLUME XXVI

NUMBER 3, 2005

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.

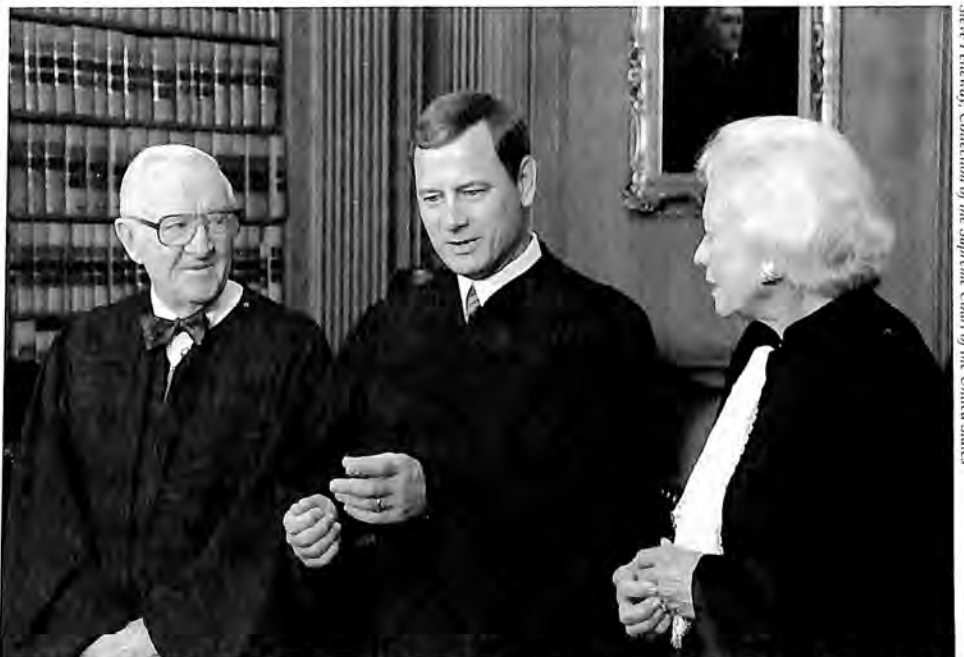
John G. Roberts, Jr. was sworn in as the 109th Justice of the Supreme Court of the United States and the 17th Chief Justice of the United States in a ceremony held in the Courtroom on Monday, October 3, 2005. The brief investiture ceremony was held at 9:15 AM. At the conclusion of the ceremony, the Chief 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 him. 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 Suplee 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 members, which would be a new high.

An increasing number of the current state chairs have successfully served as such in past years. A representative list includes: Robert Gwinn, Dallas; John Schaibley, Indiana; R. Bruce Shaw, South Carolina; William N. Shepherd, South Florida; Jim Wyrsh, Missouri-West; and after a brief hiatus, Terry White, Rhode Island. Let me express

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

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 micelischs@aol.com.

Let me thank you for your past support and for what I hope will be your assistance hereafter in building and maintaining a stable membership base for the Society.

Frank Jones

The Supreme Court Historical Society

Quarterly

Published four times yearly in Spring, Summer, Fall, and Winter by the Supreme Court Historical Society, 224 E. Capitol Street, N.E., Washington, D.C. 20003. Tel. (202) 543-0400, www.supremecourthistory.org. Distributed to members of the Society, law libraries, interested individuals, and professional associations.

Managing Editor
Advisory Editors

Kathleen Shurtleff
John Q. Barrett
James B. O'Hara

THE TUXEDOED DESCENDENTS

By Franz Jantzen, 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 descendents 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 photogravure from the ABA's 1914 Report 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 19-year old Melville W. Fuller Wallace. Mr. Ernest Bradford Ellsworth, a descendent 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 first 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 St. 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. All-out debates on both issues were thus avoided.

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 en masse at 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, the Supreme Court party was allowed to enter."

(See page 11 of this issue for an article about Franklin Chase Hoyt.)



The seven descendants of Chief Justices are: (left to right) Morrison R. Waite, Roger B. Taney Anderson, Arthur M. Rutledge, William Jay, Burwell Keith Marshall, Franklin Chase Hoyt, and Melville W. Fuller Wallace.

SOCIETY CO-SPONSORS CONFERENCE ON BROWN II DECISION

On Monday, May 18, 2005, the Supreme Court Historical Society and the Robert H. Jackson Center in Jamestown, New York, co-sponsored a roundtable discussion by former Supreme Court law clerks focusing on the Court's May 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 eradication 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 E. 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 event, 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 v. 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*."



Conference participants and special guest posed on the steps outside the Athenaeum Hotel at Chautauqua Institution. They are: (top center) Professor John Barrett; (back row, left to right) Daniel Meador; Geraldine Davidson and Gordon B. Davidson; (center row, left to right): E. Barrett Prettyman, Jr., Betty Pollock and Earl Pollock. Front row: Secretary William T. Coleman and Dr. Ophelia DeLaine Gona.

SPECIAL CEREMONY RECOGNIZES THREE TRUSTEES

June 2005 marked the 30th 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 saw 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 1975. 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



Vincent C. Burke, Jr. (left) and Peter A. Knowles were both recognized for their dedicated service to the Society.

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.

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

Professor Jean Smith

and the Marshall Court, it was the people who were sovereign, not the states. That seminal idea underlies not only the jurisprudence of the Marshall era, but established the framework for the nation's growth for the next 200 years. The role of the Supreme Court, the power of the central government, the seamless web of commerce we enjoy, the constitutional protection of private property, and especially, the supremacy of the Union, trace to John Marshall.

As one writer noted, "Marshall hit the Constitution much as the Lord hit the chaos, at a time when everything needed creating."

With confirmation hearings in the news, I thought you might appreciate some of the characteristics John Marshall brought to the Court when he was appointed chief justice in 1801:

- A total lack of judicial experience;
- A carefully cultivated reputation for lassitude;
- An unquenchable thirst for Madeira.

Theodore Sedgwick, who was Speaker of the House at the time, put it best when he said that Marshall was "attached to pleasures, with convivial habits strongly fixed. He is indolent, therefore, but when aroused he has strong reasoning powers. They are indeed almost unequalled."

Marshall also brought to the Court what Senator Rufus King of New York called "the best organized mind of his generation." And it was that combination of conviviality and clarity, of warmth and intellect, that helped Marshall convert the Court from a weak, fragmented, and partisan institution into the unquestioned custodian of constitutional legitimacy we know today.

John Marshall was born in a simple wooden cabin at the foot of the Blue Ridge mountains in September 1755, the eldest of fifteen children, all of whom survived into their seventies and eighties. Like many raised on the frontier he had little opportunity for formal schooling, but read at home under the tutelage of his parents. He taught himself Greek and Latin, and mastered many of the classics. His elegant prose style, and the almost poetic cadence of his great opinions, comes from having laboriously copied out as a young boy Alexander Pope's *Essay on Man*. The rhythmic clauses of Pope made an impression he never forgot.

Marshall's love for the Union was deeply held. It grew in the first instance from his experience as a front-line soldier—a captain of light infantry—during the War of Independence. In 1775, at the age of twenty, he joined the Continental Army and fought at Great Bridge, Brandywine, Germantown, and Monmouth. He was with Washington at Valley Forge and present at the storming of Stony Point. Later he wrote that his wartime service confirmed his habit of considering America as his country and Congress as his government. "I had imbibed these 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.

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 restatement 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 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 an end to 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



Following Virginia's ratification of the Constitution, Marshall worked closely with Patrick Henry (above) and James Madison to draft the Bill of Rights.

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 the Supreme Court was so defective it 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 hesitation he said, "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



Marshall served with General Washington at Valley Forge. Wartime service caused him to consider America as his country, and Congress as his government.



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: Definer of a Nation*, was the keynote speaker at a celebration of the 250th anniversary of the birth of John Marshall. Professor Smith's speech was given at Marshall University in Huntington, West Virginia on September 24, 2005, where he is a member of the faculty. His speech is excerpted here.

Looking back over the course of American history, three persons stand preeminent in the nation's development:

- George Washington, who founded the country;
- Abraham Lincoln, who saved it;
- John Marshall, who defined it.

A list of Marshall's great decisions reads like the ABC's of American constitutional law. As Chief Justice of the United States for 35 years, Marshall took the Constitution the Framers devised and gave it meaning. Almost single-handedly he reversed the centrifugal thrust of states' rights unleashed by Mr. Jefferson's election in 1800, and provided the rationale for national unity.

The Constitution was the work of people, said Marshall, not the states. And the people made it supreme. For Marshall,

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 from the royal prerogative. Whether the Constitution was even justiciable in a court of law was problematic.

The Supreme Court's jurisdiction over the states was also in question. When the Court rendered judgment against the State of Georgia in 1793, Georgia refused to comply and the nation quickly adopted the Eleventh Amendment stripping the federal judiciary of authority to try a State as a defendant in private lawsuits.

Attendance was also a problem for the Court. The lack of a quorum often caused cases to be carried over, and sometimes caused sessions to be canceled completely.

The problem of leadership was particularly acute. When John Jay resigned as Chief Justice in 1795 to become governor of New York, President Washington offered the post to Alexander Hamilton, who declined; then to Patrick Henry, who declined; then to John Rutledge of South Carolina, whom the Senate refused to confirm; then to William Cushing of Massachusetts whom the Senate confirmed but who declined to serve because of ill health; and finally to Oliver Ellsworth who served from 1796 to 1800.



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 as 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 took their meals 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—very few briefs were submitted—and after dinner in the late afternoon the Justices would clear the table and discuss the cases they had heard argued, usually over some of Marshall's very fine Madeira. The result was two unique Marshallian contributions to American jurisprudence:

- The Conference among the Justices (which now take place weekly with no one else present.)

- A clearly labeled Opinion of the Court.

Both trace to Marshall's leadership. *Talbot v. Seeman*, the first case decided by the Marshall Court, was the first case in American history to provide an "Opinion of the Court." During the 35 years Marshall was Chief Justice the Supreme Court decided some 1200 cases. There was an Opinion of the Court in almost all of them, and well over 90 percent were unanimous.

Marshall led the Court, he did not command it. He believed it far more important for the Court to speak with one voice. Only once in 35 years did he dissent on a constitutional issue and there is abundant evidence that he sometimes changed his vote in conference to achieve unanimity. Some have suggested that Marshall dominated his colleagues. Professor David Currie of the University of Chicago once published an article titled "John Marshall and the Six Dwarfs." A better image for the Court would be Shakespeare's "band of brothers": the phrase used by Henry V at Agincourt, and employed by Nelson after the Battle of the Nile to describe the relationship among his captains. Just as the British victory over the French fleet required an instinctive understanding of the rules of engagement by Nelson's captains, the unanimity of the Marshall Court required fundamental agreement among the Justices as to the purposes of the Constitution.

Justice Story told a marvelous tale about the collegiality among the Justices. Sharing a coach to Washington with President Josiah Quincy of Harvard, Story related how at one point the Justices decided they were imbibing too heavily and agreed to have their Madeira only if it were raining.

After three days of abstinence Marshall had had enough. "Brother Story," he said, "step to the window and see if it looks like rain." Story did so and announced the sun was shining brightly. "All the better," Marshall replied. "Our jurisdiction is so large, and the laws of probability are such, that it must



Careless of his personal appearance, contemporaries said that if you met John Marshall informally (left), you would never guess that he held high office.

be raining somewhere."

Marshall's great decisions are familiar. In *Marbury v. Madison* in 1803 Marshall established the authority of the Supreme Court to interpret the Constitution, and to strike down an Act of Congress if it conflicted. The Constitution not only established the political basis of American society, said Marshall, but it was also an important legal text that could be interpreted by courts in the course of ordinary litigation. In effect, Marshall legalized the Constitution. It was not only a law, but it was a higher law. And then that wonderful phrase, "It is emphatically the province and duty of the judicial department to say what the law is." Almost by his bootstraps, Marshall had lifted the Court to constitutional supremacy.

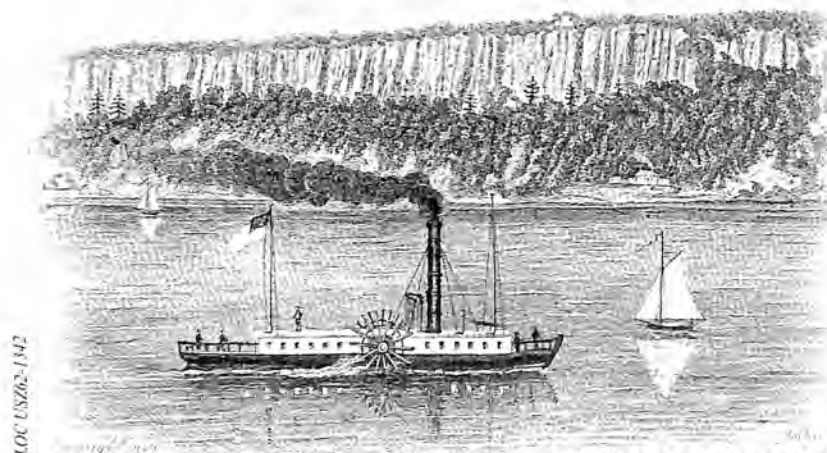
Marbury v. Madison is the keynote of the Supreme Court's constitutional authority. But insofar as nation-building is concerned, no holdings have been more important than Marshall's great decision in *McCulloch v. Maryland* and *Gibbons v. Ogden*. In *McCulloch*, in 1819, Marshall provided for the expansion of Congress's legislative authority far beyond the black letter text of the Constitution:

Let the end be legitimate, let it be with the scope of the Constitution, and all means which are appropriate, which are not prohibited but consist with the letter and spirit of the Constitution, are constitutional.

Five years later in *Gibbons v. Ogden* Marshall struck down the steamboat monopoly established by New York State on the Hudson River, and held that the regulation of the nation's commerce was the prerogative of the national government, not the states. The states could not impose any burden on commerce. They could not favor their own products at the expense of those from other states, or from other countries. They could not restrict the free flow of commerce in any way. The national economy we enjoy today in which for commercial purposes state boundaries are largely irrelevant stems directly from Marshall's decision in *Gibbons*. And as for nation-building, two other decisions in passing: *Martin v. Hunter's Lessee* in 1816, and *Cohens v. Virginia* in 1821, holdings that established the authority of the Supreme Court to hear appeals from state courts when a federal issue is at stake. Those decisions insure that federal laws, treaties, and the Constitution itself are uniformly interpreted throughout the nation. That too traces to John Marshall. Recall that eloquent passage in *Cohens* when Marshall evoked the spirit of national unity:

In war we are one people. In making peace we are one people. In all commercial regulations we are one people. And the government which is alone capable of managing their interests is the government of the Union.

These cases illustrate how Marshall shaped and defined the nation. I could have alluded to the great cases concerning the contract clause, *Fletcher v. Peck*, and the *Dartmouth College Case*, cases that lie at the root of our corporate economy; or *Johnson v. McIntosh*, the great decision of the Marshall Court concerning aboriginal people that established Indian title to tribal land.



The ruling in *Gibbons v. Ogden* ended the monopoly on steamboat commerce in New York state, and created the notion that interstate commerce was governed at the national level.

The issue of slavery as such never came before the Marshall Court, but throughout his life Marshall opposed the "institution" and worked for its abolition. As a leader of the Richmond bar Marshall argued the great manumission case of *Pleasants v. Pleasants* in 1799 supporting the right of the testator to set his slaves free at his death. This is the largest manumission case in American history, involving the freedom of 400 slaves, and Marshall prevailed against one of the sacred canons of property law: the rule against perpetuities.

There was little Bill of Rights litigation before the Marshall Court, one of the reasons being that in the landmark case of *Barron v. Baltimore* Marshall held that the Bill of Rights applied only to the national government and not to the states. This of course, was long before the adoption of the Fourteenth Amendment.

The one important Bill of Rights decision occurred during the Burr treason trial in 1807 when Marshall applied the sixth Amendment's requirement that the accused be informed of the nature and cause of the charges against him to abolish the common practice of prosecutors in those days of using fictitious indictments. The Burr trial, which Marshall presided over while on circuit, was in many respects Marshall's finest hour. He withstood what amounted to a lynch mob in Richmond, rejected the common law concept of constructive treason, and held that the Constitution required an overt act, testified to by two witnesses in open court. Marshall's charge to the jury in the Burr trial, construing the Constitution's definition of treason narrowly, is a landmark in the protection of American civil liberty. And it was also in the Burr trial that Marshall issued a subpoena to President Jefferson. "The president," said Marshall, "unlike the King of England, is not above the law."

Marshall tried the Burr case on circuit. In those days Supreme Court Justices also "rode circuit," and Marshall's circuit included Virginia, including that portion that became West Virginia, and North Carolina. Twice a year he would sit as a trial judge in Richmond, and 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 39 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 asked 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 route 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 Huntingdon, 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 accompaniment 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 the least 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 meanest 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 departed. But ranking equally with those decisions is the aura of authority he imparted to the Court. Sir Lewis Namier, the great English scholar, once observed that historians remember 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.

John Adams and Thomas Jefferson died on July 4, 1826—the 50th anniversary of the Declaration of Independence. Marshall, after a brief illness, died in Philadelphia, July 6, 1835.

On July 8, as Marshall's funeral cortege 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 tolling the death of the Great Chief Justice. It would never ring again.



The Liberty Bell still bears the prominent crack that was created when it tolled in honor of John Marshall's funeral cortege.

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.

His proposal was chosen from a field of 58 final entries, but the finalists had been culled from an initial field of 71,248. 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 50,000 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 Judge 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 given 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.

CELEBRATION OF THE 30TH ANNUAL MEETING



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 up 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 programs, 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 Ruth Bader Ginsburg, attended to hear her colleague speak. Newly-appointed Justice Sandra Day O'Connor presented an Annual Lecture in a caucus room in the Russell Senate Office Building. Logistical considerations precluded using that location on a permanent basis. Happily, it was possible to relocate the lecture to the Supreme Court Chamber, and that august room has been the scene of the Annual Lecture ever since.

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 1972-73 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 U.S. Court of Appeals for the Fourth Circuit in August 1984. Judge Wilkinson's wife, son and daughter attended the lecture. 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*.

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 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 premiere accomplishment of the year was passage of the John Marshall Commemorative Coin Bill. The coin affords a national stage for the Society's efforts to increase public awareness of the Court's rich history, while highlighting the unique accomplishments of the Great Chief Justice. The surcharge revenues generated by the sales will substantially increase the Society's endowment, providing meaningful support to the Supreme Court Fellows program and other worthwhile educational endeavors.

Other notable achievements for the fiscal year included the introduction of the Amicus Curiae membership—a new category of membership for managing partners of law firms and corporate general counsels. Symposia and lecture programs completed include the five-part 2005 Leon Silverman Lecture series, and cosponsorship of the National Heritage Lecture, directed this year by the Capitol Historical Society. Publications produced include regular issues of the *Quarterly* magazine, and three issues of the *Journal of Supreme Court History*. Educational training sponsored by the Society included a special program for teachers of history and government in New York City, comprising the first out-of-town teacher training officially sponsored by the Society. Other educational endeavors included training and enrichment sessions for teachers in the Washington metropolitan area, as well as the traditional two sessions of the Summer Institute. This on-going program has garnered much praise and support, and has provided intensive training to hundreds of teachers across the country in the years since its inception.

The acquisition of items important to the Court and its history has continued to be a priority throughout the year. Several articles of great importance received during the year included gifts of furniture and artwork previously owned by Chief Justice Charles Evans Hughes. These items were

donated to the Society by three of the Hughes grandchildren. Purchases included a significant collection of caricatures by noted artist Oscar Berger.

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 Moderow, E. Barrett Prettyman, 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. McKusick 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 remarked that the caliber of the incoming Trustees reflected the attainments of the Society, observing that the Trustees and Officers of the organization include some of the great 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



Michael Cooper received an award on behalf of Sullivan & Cromwell. He was an essential member of the Ad Hoc Coin Committee.

publications and programs produced by the Society.

Nominations for officers of the Society were presented at this meeting by Society Secretary, Virginia Daly. Those nominated to serve an additional three-year term in the offices indicated are: **Leon Silverman, Chairman of the Board of Trustees; Frank C. Jones, President.** New Vice Presidents elected were: **Vincent C. Burke III and Ralph I. Lancaster.** Nominated to serve a one-year appointment as At-Large Members of the Executive Committee of the Board of Trustees were the following: **Jerome Libin, Mrs. Thurgood Marshall, Maureen E. Mahoney, James Morris, John Nannes, Leon Polsky, Teresa Wynn Roseborough, and Seth P. Waxman.** All were elected by unanimous consent.

Following the elections, Justice Sandra Day O'Connor assisted in presenting awards in special recognition of 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 and sales of the John Marshall Commemorative Silver Dollar. (see *Quarterly* #2, 2005 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 came forward to assist in a special presentation recognizing Mr. Lancaster's Herculean efforts. Mr. Cooper had compiled a record of much of the email correspondence between Mr. Lancaster and his committee members. The bound leather volume



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

30th Annual Meeting continued on page 14



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-Dallas; Phillip Kessler, Michigan; Thomas Kilbane, Ohio-North; Wayne J. Mark, Nebraska; Rick Nydegger, Utah; Richard (Doc) Schneider, Georgia; R. Bruce Shaw, South Carolina; Colin Tucker, Oklahoma FY 05; John Tucker, Oklahoma FY 04; James Wyrsh, Missouri-West.**

Several other state chairs had achieved their goals by June 5, but were unable to attend. They were: **Richard Campbell, Massachusetts 2; Charles Douglas, Illinois; James M. Lyons, Colorado 1; Michael Mone, Massachusetts 1; Michael W. Smith, Virginia; Shaun S. Sullivan, Connecticut 1.**

This past year, the Society launched an exciting new program to attract major law firms and corporations to the Society as donors. The **Amicus Curiae** program was launched with generous assistance from **Joseph Moderow** and the **UPS Foundation**. More than forty-one law firms and corporations have responded to this campaign. Those present to be recognized that evening were:

Michael A. Cooper, of Sullivan & Cromwell; Miguel Estrada, of Gibson Dunn & Crutcher; Robert Juceam of Fried Frank; Jerome Libin, Sutherland Asbill and 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 Winchcole Foundation; Ned Carpeneter and the Good Samaritan, Inc.; Michael A. Cooper; Virginia Daly; James Goldman; Robert Juceam and Fried Frank Shiver & Jacobson; Jerome Libin and the Park Foundation; Steve McAllister and the University of Kansas; Gregory Michael; Joseph Moderow; Rick Nydegger and AIPLA; 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



James Falk, Jr. was recognized for his service as a membership chair for Washington, DC.



Richard A. (Doc) Schneider, was elected to the Board of Trustees. He was recognized for his outstanding service as state chair for Georgia.

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 audition 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



Newly-elected Trustee, Rick D. Nydegger, assisted in several important efforts, including membership work in the state of Utah and fundraising.

emphasis on the choral music of America. Presenting the music of America to the people of 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 Boskey 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 participants, 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 an intense, 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 attended 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 teachers with know-ledgeable insight, first-hand 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 and 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 Progress and Solicitor General Paul Clement.

In keeping with best practices for law-related education and Street Law teaching strategies, the resource people are rarely asked to simply "stand and deliver." Instead, their role is to be involved in the activities as a supplement to the participants' learning. By sharing their expertise and experience, they

move the participants beyond a theoretical understanding of the principles to the practical. The experts who participate in the program generally appreciate the opportunity to interact with the participants and to participate in a hands-on learning experience, and often say that a highlight of their participation is the enthusiasm and involvement of these special resource teachers.

This was Richard Katskee's first year of involvement with the program, and he described the experience as rewarding and unique. An attorney with Americans United for Separation of Church and State, Mr. Katskee trained the petitioner's team in the Moot Court of *Van Orden v. Perry*, the Court's 2005 case addressing the placement of the Ten Commandments on the grounds of the Texas state capitol. Jay Sekulow helped the respondent's team prepare, and the teachers held the moot

court in Georgetown Law Center's Supreme Court Institute 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 them, 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, Ms. Mahoney was a valuable inside 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 bringing a case before the Court and the preparation for arguing a case there. Ms. Mahoney was able to impart both her love of advocacy and



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 Institute Moot Courtroom.



Justice Sandra Day O'Connor talks with Jaime Festa-Daigle, a teacher at Lake Havasu High School in Arizona, and Stephanie Schlatter, Street Law, Inc.'s law student in residence, during the reception held at the Court.

respect for the Court while sharing personal anecdotes and stories. Almost 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



Mrs. Thurgood Marshall greets Stephanie Wicks, a teacher at Germantown High School in Philadelphia. Mrs. Marshall was a surprise guest at the reception, and many Institute participants said that meeting Mrs. Marshall and Justice O'Connor were highlights of the program.

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 a 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 requirement 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.

NEW SUPREME COURT HISTORICAL SOCIETY MEMBERSHIPS JULY – SEPTEMBER 2005

ARIZONA

Kathleen Harrington, Scottsdale

CALIFORNIA

Andrew P. Banks, Mission Viejo
Adam Boorstin, Beverly Hills
Catherine Chatman, Davis
James Chodzko, Encinitas
Linda Civitello, Los Angeles
Anthony F. Earle, Cupertino
Daryl Mutton, San Diego
Roger Naghash, Newport Beach
David B. Nemer Jr., San Francisco
Phillip Schott, Sacramento
Claude H. Smart, Stockton
George Spanos, Walnut Creek

COLORADO

Joseph A. Gavaldon, Ft. Collins
Margaret Masters, Colorado Springs
Jane Michaels, Denver
David Molnar, Littleton

CONNECTICUT

Joseph MacDougald, Madison

DELAWARE

Anne C. Foster, Wilmington
Andrew Gonser, Wilmington
William O. LaMotte III, Wilmington

DISTRICT of COLUMBIA

Michael Bishop
Stephan J. Boardman
James B. Eaglin
Andrew S. Effron
Peter D. Ehrenhaft
William R. Ellis Jr.
Mark W. Foster
Richard A. Guest
Lewis E. Leibowitz
David W. Lloyd
Christina Ludescher
Jeany Mark
Lorelie Masters
Dwight D. Murray
Frederick R. Troncone

FLORIDA

Deanne Ashton, Jacksonville
Leon H. Brush, Sarasota
Leon H. Handley, Orlando
Pamela A. Seay, Port Charlotte
Bonnie J. Worden, Jacksonville

GEORGIA

Lee Ann Anand, Atlanta
Brian Baer, Atlanta
Steven R. Belew, Macon
Amanda Bell, Macon
D. Barton Black, Macon
Jason W. Blanchard, Luthersville
Emily R. Bramer, Atlanta
Letoyia Brooks, Rex
Jay B. Bryan, Atlanta

Joshua Z. Burnette, Macon
Cynthia Cason, Perry
Darl Hilton Champion Jr., Macon
Andy Cohen, Macon
Elizabeth M. Dees, Macon
Samantha DiPolito, Macon
Robert F. Glass, Macon
Thomas M. Gore, Macon
John T. Gunn, Atlanta
Laura Harper, Macon
Jared Heald, Atlanta
Holly Hempel, Atlanta
Mary Woodson Kennon, Monroe
Marian Haynesworth Maier, Macon
Douglas Brook Miller, Marietta
D'Andrea J. Morning, Macon
Melinda Moseley, Atlanta
Eric Rosson Mull, Cedartown
Anita Wallace Thomas, Atlanta
Sara S. Turnipseed, Atlanta
Thomas F. Wamsley Jr., Atlanta

HAWAII

John S. Edmunds, Honolulu
John Reyes-Burke, Honolulu

IDAHO

Daniel Riviera, Ketchum

ILLINOIS

Bill Barnhart, Chicago
Charles W. Douglas, Chicago
Kevin R. Galley, Lacon
George N. Leighton, Chicago
Lewis Michael Nixon, Chicago

INDIANA

A Scott Chinn, Indianapolis
Frederick H. Garver, Indianapolis
Jon Laramore, Indianapolis
Steve A. Oldham, Pendleton

IOWA

James Gerk, Cedar Rapids
Maurice B. Nieland, Sioux City
Thomas Pepper, Cedar Rapids
Robert Waterman Jr., Davenport

KENTUCKY

Mark S. Riddle, Louisville
Sarah Charles Wright, Lexington

LOUISIANA

John M. Duck, New Orleans
Ronald J. Sholes, New Orleans

MARYLAND

Mary T. Hall, Hollywood
Fred Israel, Royal Oak
Mary Ann Keefe, Kensington
Brooke Murdock, Baltimore

MASSACHUSETTS

Charles Hieken, Sharon
Courtney L. Moran, Boston

MICHIGAN

Monica L. Feltson, Saginaw
Daniel Katz, Ann Arbor
Kathleen McCree Lewis, Detroit
Christine M. Macey, University Center
Anita Peters, East Lansing
Brian T. Stevens, Coldwater

MISSISSIPPI

Garry Jennings, Cleveland

MISSOURI

William B. Fisch, Columbia

MONTANA

Donald C. Robinson, Butte

NEVADA

Stephen S. Kent, Reno
Peggy Leen, Las Vegas

NEW HAMPSHIRE

Scott Harris, Manchester

NEW JERSEY

Stephen R. Buckingham, Montclair
Louis Pashman, Hackensack
Jude Pfister, Morristown

NEW MEXICO

Timothy J. Picchiarini, Dexter
Freddie J. Romero, Roswell

NEW YORK

Thomas J. Bean, New York
Susan Behuniak, Syracuse
Lindsay H. Brown, New York
John R. Cipollina, Buffalo
Kimball Ann Lane, New York
Albert Lawrence, Albany
Eric Martin, New York
Stanley Plesent, New York
Joseph M. Rosenthal, Smithtown

NORTH CAROLINA

Erwin Chemerinsky, Durham
Betsy Flack, Asheville
Bynum M. Hunter, Greensboro
Victoria V. Kulik, Leicester
Charles H. Mercer Jr., Raleigh

OHIO

Dale Fellows, Willoughby
Mark Garrett, Harrison
Mark McClendon, Solon
Benno Rosenthal, Beachwood

OREGON

Phillip D. Chadsey, Portland
Sarah Crooks, Portland

PENNSYLVANIA

Andrew T. Cupit, Philadelphia
Charles E. Evans, Pittsburgh
James W. Gicking, Philadelphia

Edwin L. Klett, Pittsburgh
W. Gregory Rhodes, Pittsburgh
Norma L. Shapiro, Philadelphia
Amy Marie Wertz, Pittsburgh

PUERTO RICO

Mariela Maestre Cordero, San Juan

SOUTH CAROLINA

Brian Cantwell Duffy, Charleston
Debbie Whittle Durban, Columbia
Wesley D. Few, Columbia
Christopher C. Genovese, Columbia
Sue Erwin Harper, Columbia
S. Keith Hutto, Columbia
William H. Latham, Columbia
Steven A. McKelvey Jr., Columbia
M. Ronald McMahan Jr., Columbia
Courtney Crook Shytte, Columbia

SOUTH DAKOTA

Roberto A. Lange, Sioux Falls

TENNESSEE

Scott Edward Atkinson, Nashville
Melody Rachael Barron, Nashville
Natalie Marie Beal, Nashville
Brian Patrick Boyd, Nashville
Joseph Patrick Chase, Nashville
Jeffrey Hamilton Chestnut, Nashville
Joshua D. Collins, Nashville

Benjamin Grant Dickson, Nashville
Tracey George, Nashville
Julie Maria Glover, Nashville
Lori Suzanne Gutzman, Nashville
Laura Michelle Hardesty, Nashville
Adam L. Herman, Nashville
Michael Todd Holick, Nashville
Alexandra Anne Hui, Nashville
Melissa Judith Hunt, Nashville
Nina Michelle Ingwer, Nashville
Helen Lorraine Istvan, Nashville
Jung Whan Ju, Nashville
Cory Dean Kandestin, Nashville
Devon McKechnan Largio, Nashville
Julia Ann Lehning, Nashville
Bonnie Jean Little, Nashville
Lauren Michelle Loew, Nashville
Wesley Martin Mullen, Nashville
Rachel Lynn Ricker, Nashville
Travis Alan Rossman, Nashville
Stanley Dagnal Rowe, Nashville
Matthew Randall Stockstill, Germantown
Catherine Phillips Tennant, Nashville
Terry Lamar Wells Jr., Nashville

TEXAS

Alex Acosta, El Paso
Nikki Adame, Houston
Constantino Barrera Jr., Winnie
Kindel Elam, Houston

Stewart Frazer, Dallas
Phyllis Lee, Cedar Park
Michael Massengale, Houston
Sharon McCally, Houston
Gary L. Paulson, Cypress
Lydia Powell, Converse
Andrew Stubblefield, Dallas

VIRGINIA

Ashby B. Allen, Richmond
Christopher Carney, Falls Church
Robert J. Grey Jr., Richmond
Christopher M. Hammer, Charlottesville
W. Wat Hopkins, Blacksburg
Alinda Lewris, Great Falls
Horace McClerklin, Alexandria
Cynthia McDowell, Alexandria
Devanshi Patel, Arlington
Hannah Smith, Alexandria
Robert Smullen, McLean
Christina M. Vaughen, Fairfax
Gregory A. Werkheiser, Springfield

WASHINGTON

Gerry Alexander, Olympia
Deborah D. Fleck, Seattle
Joan Tierney, Seattle

WISCONSIN

Bret Reese, Mequon

WANTED

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

NON PROFIT ORG.
 US POSTAGE
 PAID
 WASHINGTON, DC
 Permit No. 8232