



THE SUPREME COURT
HISTORICAL SOCIETY

Quarterly

VOLUME XXXIV

NUMBER 1, 2012

Texas v. White Reenactment

The actions of the Confederate government of Texas were the topic of discussion in the Supreme Court of the United States on November 9, 2011. The context for this new “judicial review” was the annual Frank C. Jones Reenactment of early Supreme Court cases. On November 9, the reenactment examined the post-Civil War era case of *Texas v. White*. Reenactments afford members and their invited guests the opportunity to enjoy the staging of a landmark case with a modern Justice presiding, and distinguished lawyers presenting oral argument for the historic litigants. As in past years, the Courtroom was crowded for the event.

Associate Justice Antonin Scalia presided over the case as the actions of the insurgent government of Texas were debated. The case centered on the sale in 1864 of US bonds originally owned by the state of Texas to investors represented by White. Claiming that the Confederate government was not legitimate, the new government sought to “restrain the purchasers from receiving payment. . . .” But having once “seceded” from the Union, could Texas now be considered a state?

For the reenactment, David Beck, a founding partner of Beck Redden & Secrest, represented his home state of Texas. Patricia A. Millett, formerly of the Solicitor General’s office and now a partner at Aiken Gump, appeared on behalf of George W. White, who was one of the bond purchasers.

Prior to the argument itself Melvin I. Urofsky set the stage for the audience by placing the case in its historical context. Professor Urofsky has long been Chairman of the Board of Editors of the *Journal of Supreme Court History*

and is the author of many books on the Court. His most recent is the widely acclaimed **Louis D. Brandeis: A Life**. Professor Urofsky then gave an overview of the entire case. The overview follows:

“One hundred fifty years ago this week, the Confederate States of America, as they termed themselves, elected Jefferson Davis as the president, Union forces captured forts at Belmont, Missouri, and Port Royal, South Carolina, and an American warship, the *USS San Jacinto*,

stopped the British ship *Trent*, and took off two Confederate agents, James Mason and John Slidell, who were on their way to Europe to negotiate treaties with England and France. Southern states had begun seceding from the Union in December 1860, following the election of Abraham Lincoln to the presidency, and in February 1861, with six states having voted for secession, the first session of the Provisional Confederate Congress met in Alabama. On April 12, 1861, the bombardment of Fort Sumter began. As Lincoln

said, ‘and the war came’.

“The Civil War is the great American trauma. An estimated 700,000 people, on both sides—soldiers and civilians—died, a sum greater than all other military engagements in American history combined. Historians are fairly agreed that the chief cause of the war was slavery. Initially the dispute was not over whether the slaves should be emancipated, but focused on whether slavery should be allowed in the western territories. When Lincoln won the 1860 election, southerners believed that not only would they not be able to settle the territories as slave states, but that



Photos by Steve Petteway

David Beck, Justice Scalia and Patricia Millett were photographed following the reenactment of *Texas v. White*.

A Letter from the President



Gregory P. Joseph

The Society had a very productive first quarter this year. In February, we co-hosted *Thurgood Marshall: Mr. Civil Rights* in New York City as our annual lecture with the Historical Society of the Courts of the State of New York. The evening was sold out, and 450 people enjoyed a fascinating lecture by Professor Randall Kennedy

focusing on Thurgood Marshall as advocate — as an architect of the legal strategy that led to *Brown v. Board of Education* and beyond. The next issue of the *Quarterly* will report on the program more completely, but I will say that it was an absorbing, often touching and poignant lecture. We were extremely honored to have Justice Sotomayor participate in the program.

On March 14 Professor Johnathan O'Neill of Georgia Southern University delivered the first lecture in the 2012 Leon Silverman Lecture Series, which is focused on Property Rights. His talk, *Property Rights and the American Founding: An Overview*, was perceptive and expansive. His insight, among many others, into the different jurisdictional scope of protection accorded the Contracts and Takings Clauses (the former applicable only to states, the latter only to the federal government), was intriguing, and his refusal to shrink from addressing the elephant in the room — the upsetting subject of human beings as property — was outstanding. His remarks will be published in an upcoming issue of the **Journal of Supreme Court History**. We owe a debt of gratitude to the Counselor to the Chief Justice, Jeffrey P. Minear, for hosting Professor O'Neill's lecture.

By the time you receive this issue, the panel honoring the 30th Anniversary of the Appointment of Justice Sandra Day O'Connor to the Supreme Court Bench will have taken place on April 11 at the Newseum. We are extremely honored to have on the panel every female Justice to have served on the Court. Cosponsored by The Freedom Forum, this is a truly historic event.

Society publications have recently been showered with a great deal of favorable, and, if I may say, well-deserved, publicity. On page 12 of this issue there is a charming story about **Supreme Chef**, a cookbook of Martin Ginsburg's best recipes. It was featured in an NPR story, and followed by a host of press articles (beginning with the *Washington Post*) in December. Our other new publication, **Courtwatchers:**

Eyewitness Accounts in Supreme Court History (see page 16 for a brief article about the book) by Ms. Cushman, our Director of Publications, has received many glowing reviews beginning in December and, most recently, in the April issue of *Choice* magazine (a periodical utilized by most academic libraries to aid them in making choices for new books). In it the author states, quite accurately, that Clare “. . . has written a truly entertaining and informative work on the nation's highest court. The chapters are organized around themes such as the first years of the Supreme Court, appointment and confirmation of justices, circuit riding . . . stories by law clerks, and how to know when to step down from the Court. Each chapter is completely infused with stories of those who were there, such as the justices, journalists, attorneys, spouses, children and friends. . . . Drawing from firsthand accounts, journals, letters, interviews, and books, the author has painted as rich a tapestry of life inside the Court as could possibly be imagined.” It is gratifying to receive independent praise for the Society's many outstanding books.

Recently, the Society lost one of its charter members, Judge Wesley E. Brown. A member since the Society was formed in 1974, Judge Brown passed away in January 2012 at the venerable age of 104. He was the oldest working federal judge in the nation at the time of his death. When asked about his longevity as an active judge, he once remarked that: “I was appointed for life, or good behavior, whichever I lose first.” To put the length of his service into perspective, Judge Brown served for twenty years together with one of his former clerks — until that Judge took retirement, while Judge Brown continued to serve. We are proud to have counted him a member of the Society since 1974. I know there are a few other charter members still participating in the Society, and we salute you and thank you for your dedication and support.

While the times are still financially challenging, we remain committed to producing programs and publications to benefit the members and the American public at large. Since assuming the office of President, I have become aware of the many ways and means in which the Society is benefitted by its loyal supporters. Please accept our thanks for all you have done, and continue to do, to benefit the Society. Please keep the Society in mind whenever you are able to lend support as we work together to fulfill the mission of educating the public about the Supreme Court and the federal judiciary.

Gregory P. Joseph

Calendar of Events for 2012

Leon Silverman Lecture Series (remaining)

All Lectures will be given in the Court Room
Supreme Court of the United States
#1 First Street, NE
Washington, DC 20543

May 2, 2012 6 PM
Property Rights in the Gilded Age
Professor James W. Ely, Jr.
Vanderbilt University

May 23, 2012
A Prudent Regard for Our Own Good?
James Madison and the Commerce Clause,
In Nation and State
Professor Mark R. Killenbeck
University of Arkansas School of Law

October 10, 2012 6 PM
The Supreme Court and the Takings Clause
Professor Richard A. Epstein
University of Chicago School of Law

November 14, 2012 6 PM
The History of Native American Lands and
the Supreme Court
Professor Theda Perdue
University of North Carolina, Chapel Hill

All lectures are followed by a Reception.

Celebration of the 30th Anniversary Of Sandra Day O'Connor's First Term on the Supreme Court

April 11, 2012 6:30 PM
The Annenberg Theater
Newseum
555 Pennsylvania Avenue, NW
Washington, DC 20001
Forum Celebrating the 30th Anniversary of
Sandra Day O'Connor's Appointment to the Supreme Court

Forum Participants: The Honorable Sandra Day O'Connor,
The Honorable Ruth Bader Ginsburg, The Honorable Sonia
Sotomayor, and the Honorable Elena Kagan

Moderator, James Duff
Reception to Follow

38th Annual Meeting

Monday, June 4, 2012
Annual Lecture 2 PM

Inventing Democratic Courts: The Supreme Court Building as an Icon of Government

Professor Judith Resnik, Yale Law School
Drawing upon her award-winning book **Representing Justice: Invention, Controversy and Rights in City-States and Democratic Courtrooms**, Prof. Resnik will map the growth in national commitment to courts as illustrated by the Supreme Court Building and the challenges that democracy poses for courts.

General Meeting of the Membership	6 PM
Meeting of the Board of Trustees	6:20 PM
Annual Reception	7 PM
Annual Dinner	8 PM
Evening events by reservation only	



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.

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Continued from page 1

the South would now be reduced to a permanently inferior section of the country, subservient to the mercantile and industrial North.

“Lincoln from the beginning avowed that his sole purpose was to save the Union, but as time went on the North also demanded the end of the ‘peculiar institution.’ ‘The War’ as it is still called in many parts of the South, left lasting scars that in some instances have never healed. Just 100 miles south of here in Richmond, die-hard supporters of the Confederacy still set up a 24-hour vigil at the statue of Robert E. Lee on his birthday. One still hears that the war was fought over the issue of states’ rights, although when one examines the question, the rights involved were those of white slaveholders to keep their human chattels and to take them wherever they wanted.

“One of the great questions of the time was the constitutional legitimacy of secession. While the Constitution clearly gives Congress the power to provide for the admission of new states to the Union, and holds that the new states will be on an equal footing with the older ones, the document is silent on the question of whether a state, once in the Union, can leave.

“In the months between the South Carolina secession convention in December 1860 and Lincoln’s inaugural in March 1861, paralysis gripped the national government. President James Buchanan, while calling for the preservation of the Union, claimed he lacked power to forestall secession. His attorney general, the southern sympathizer Jeremiah Black of Pennsylvania, informed the President that he, Buchanan, could do nothing. If states seceded, only Congress could act, and if Congress took military steps to coerce a state, that would absolve the state of any constitutional obligations to the Union.

“Buchanan adopted Black’s views in his last address to Congress, blaming the northern states and their anti-slavery personal liberty laws for forcing the rupture. But while the Constitution did not permit secession, and while Article II required the President to “take care that the laws be faithfully executed,” he had no authority to use force. As William Seward sarcastically summed up Buchanan’s position: “It is the duty of the President to execute the laws—unless somebody opposes him—and that no state has the right to go out of the Union—unless it wants to.”

“Lincoln, of course, assumed from the very beginning that the Union could not be sundered, and his great skills both as a political leader and as commander-in-chief led to the preservation of the Union. For Lincoln, there was no question about secession—it was illegitimate.

“The Supreme Court during this period remained relatively quiet. In early 1861 it decided the case of *Kentucky v. Dennison*. Willis Lago, a freed slave, had helped a slave woman, probably his future wife, escape from Kentucky to Ohio. The Kentucky governor demanded that Lago be returned to stand trial for stealing, but Ohio governor Salmon Chase refused because Ohio did not recognize the crime of “stealing” a person. Chase’s successor as governor, William Dennison, also refused, and Kentucky sued. Chief Justice Roger Taney, an ardent southern nationalist, in normal times would have written an opinion siding with Kentucky, and declaring that the national government, either through the judiciary or the executive, could force Ohio to hand over Lago. But Taney did not want to hand the incoming president such a powerful weapon. So he borrowed a page from John Marshall’s playbook. In an opinion reminiscent of *Marbury v. Madison*, Taney chastised Ohio for not extraditing Lago,

but then ruled that the national government could not force a state governor to act.

“The legitimacy of secession came up in the 1863 *Prize Cases*, but was not resolved. From the beginning Lincoln had denied the power of any state to leave the Union; when the Confederate states rebelled, the insurrection had to be quashed. The Constitution deals only marginally with internal revolts, although Article I gives Congress the power

to call forth the Militia to suppress insurrections. Lincoln’s critics claimed this clause could not be used against the states, and they also argued that he could not act as commander-in-chief under the war powers because those powers only applied to foreign enemies. If Lincoln had accepted these interpretations, he would have been powerless, and would have had to recognize the legitimacy of the Confederacy as a foreign nation. This he would not do, and he issued a series of presidential proclamations, one of which imposed a blockade on southern ports. When Congress convened on July 4, 1861, it ratified all of the President’s actions.

“Before Congressional ratification, however, four ships had been seized under the presidential proclamation, and the attorney for the ship-owners denied the legitimacy of the blockade, an argument that delighted Chief Justice Taney. If war existed, only Congress—and not the President—could invoke the war powers, and Congress had not confirmed the blockade until July 1861. The President had exceeded his authority, and therefore the blockade was illegal and the ships should be returned to their rightful owners.

“The government responded that the Constitution gave the government the power to fight internal as well as external enemies. War was not theory, but fact, and rebellious



Collection of the Curator of the Supreme Court

Justice Scalia acted as the Court for the reenactment with his characteristic wit and hard-hitting questions.



President Emeritus Frank C. Jones visits with Justice O'Connor during the reception following the reenactment.

states had fired the first shot against the Union. The President had the necessary constitutional authority to put down the rebellion.

“By a bare 5-4 majority the Court upheld the government. Justice Robert Grier agreed with the government that one never declared a civil war, but one still had to fight it and recognize its existence. While war against a foreign power undoubtedly required congressional authorization, the President’s obligation to support the laws empowered him—and not the Congress or the Court—to recognize and to act on the threat of domestic insurrection. The case dealt primarily with the extent of presidential authority, and neither the majority nor the four dissenting justices ventured into the murky area of the legitimacy of secession.

“That matter would not be resolved by the high court until 1869, four years after the war had ended at Appomattox in southern defeat, and well into what we now call congressional reconstruction. Like so many cases that come before the Supreme Court, the fact situation seems utterly commonplace, but underlying the pedestrian facts were great constitutional questions.

“As part of the Compromise of 1850, Texas had agreed to give up its claim to a substantial portion of what is now New Mexico, and in return the United States had issued five million dollars in bonds to compensate Texas. These bonds, which yielded five percent interest, were payable to either the State of Texas or the bearer. Prior to 1860, Texas law allowed for the sale of these bonds to individuals, after the governor of the state had indorsed them. These individuals could then present the debentures to the U.S. Treasury for redemption. A significant portion of the bonds, however, had been assigned by the Texas legislature to a school fund, and were still in control of the state government when it passed an ordinance of secession on March 4, 1861, the same day Abraham Lincoln took the oath of office as president.

“In January 1865, with the Civil War all but lost, the Confederate government of Texas sold to George White and various other purchasers 135 of these bonds still held in the Texas treasury, and 76 others deposited with bankers in England, in return for which White and his partner Chiles

were to deliver a large quantity of cotton and medicines. Unlike the bonds sold prior to 1861, these bonds had not been indorsed by the governor.

“The new reconstruction government of Texas sought to recover the bonds, claiming that the original sale had been void. The agent for the state, George Paschal, notified the U.S. Treasury of the serial numbers of the bonds sold to White and others, and the federal government refused to pay them when presented. Since most of the holders, like White, were citizens of states other than Texas, when Texas sued them the case went directly to the Supreme Court under its original jurisdiction of Article III, Section 2.

“It would now be impossible for the Supreme Court to avoid the question of the constitutionality of secession. Texas argued that the government that had ruled the state from March 4, 1861, until April 1865, was illegitimate, and therefore did not have the power to sell the bonds. White argued that the government was legitimate, and that he and his co-defendants properly owned the bonds. If the Confederate government were legitimate, then so too was secession; if illegitimate, then the whole constitutional basis of the war collapsed.

“Aside from the question of the constitutionality of secession, the Court’s answer would also bear upon the legitimacy of congressional reconstruction. The various laws passed by Congress to govern the former Confederate states, which eventually led to military administration, all rested on the assumption that the Confederate states had been in rebellion, and that under the Constitution Congress had the power to put down insurrection and to provide for a means by which the rebellious states would be allowed to resume their place in the Union.

“The question of who owned the bonds would also have to be decided, but not until the justices could answer the larger question. We now turn to *Texas v. White*.”

Following a stimulating session of oral argument, Justice Scalia discussed the case and the opinion issued by the Supreme Court. In a 5-3 decision, Chief Justice Salmon P. Chase, writing for the Court, held that Texas did indeed have the right to bring suit. In the opinion Chase described the “. . . character of the contract of the military board with White and Chiles, as being organized for the purpose of “. . . levying war against the United States. This purpose was undoubtedly unlawful, for the acts which it contemplated are, within the express definition of the Constitution, treasonable.” It followed that as the insurgent government was not a legitimate government, it therefore had no right to sell bonds to White and Chiles. Concerning the legality of the act of secession itself, the Court held that individual states could not unilaterally secede from the Union. It further found that even during the time of rebellion, Texas continued to be a state. The ruling that secession was not legal echoed President Lincoln’s position.

2011: The Year of the Portrait

By Matthew Hofstedt, Associate Curator

Since its inception in 1974, the Supreme Court Historical Society has actively assisted the Supreme Court with acquiring portraits for its permanent collection. While the Society has routinely helped with the collection of funds to commission portraits of sitting, or recently retired Justices, opportunities to acquire period portraits have been relatively rare, the last occurring nearly 30 years ago. This drought ended in 2011 with a flood of portrait acquisitions: three portraits of former Justices and one of a former Reporter of Decisions.

Associate Justice John McLean, by an unknown artist, c. 1850.

In early 2010, the Society was asked to help identify the subject of an oil portrait owned by Ms. Elizabeth Kiley of Corona Del Mar, California. She wondered if the painting, purchased by her parents in an antiques shop in California in the 1960s and passed down in her family as “Uncle Ralph,” could be a Supreme Court Justice? In consultation with the Curator’s Office, the subject was identified as none other than John McLean, who served on the Court from 1829 to 1861. Additional research may attribute the unsigned work to the American portrait artist G.P.A. Healy.

While the Court already owned a portrait of McLean, presented by Mr. Herbert Pratt in 1941, it showed a much younger McLean, in his mid-30s, painted years before he joined the Court. The new portrait shows him about 65 years old, capturing a man in the midst of his judicial career and with a pose indicative of his presidential aspirations! The opportunity to add such a significant portrait led to negotiations with Ms. Kiley that ended with its purchase. In January 2012, conservation treatment was completed and a suitable period frame was located. Once the frame is restored, the portrait will be placed in the Supreme Court Building.

Chief Justice Charles Evans Hughes, by George B. Torrey, 1937.

Just as the excitement of the McLean acquisition was fading, the Society and Curator’s Office received another inquiry – was there any interest in a large portrait of Charles Evans Hughes? The owner, Mr. Kenneth S. Hughes, was a

descendant of the late Chief Justice who had been given the portrait by a family friend. It had been painted for the New York Lawyer’s Club in 1937, where it had hung until the club closed in the 1970s. After inspection by the curatorial staff, the three-quarters length portrait was donated by Mr. Hughes through the Society in honor of his aunt, none other

than Mrs. Elizabeth Hughes Gossett, daughter of Chief Justice Hughes and former Society President. The portrait is similar to the one that Chief Justice Hughes presented to the Court upon his retirement in 1941, also by Torrey, and which hangs above the mantle in the West Conference Room. The portrait is now displayed in the Lower Great Hall near the Visitors Entrance.

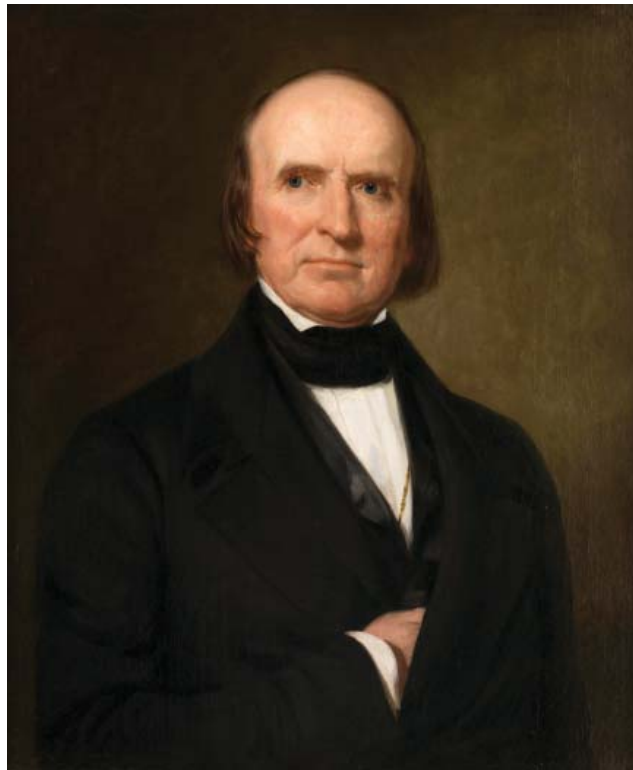
Associate Justice Gabriel Duvall, by an unknown artist, c. 1850.

During the summer of 2011, the Curator was notified of the passing of Dr. William L. Guyton of Cockeysville, Maryland, a 96-year-old World War II veteran and collector of silhouettes. Dr. Guyton’s wife, Mary B. Guyton, was a descendant of Justice Duvall,

and prior to her death in 2003 the couple had agreed to bequeath the portrait to the Supreme Court in memory of her parents, Mr. & Mrs. S. G. Benedict. Justice Duvall served on the Court from 1811 to 1835 and this portrait is noted on the back of the canvas as being “a copy of original in Capitol, Wash.” The location of the original source is not known, but it may have been lost in an 1851 fire in the Library of Congress section of the U.S. Capitol. The bequest also included a framed St. Mémin drawing of Duvall, a late 19th century engraving of the Justice by Rosenthal, and a family coat of arms. These items were exhibited in the Supreme Court Building during the fall of 2011.

Reporter of Decisions William Cranch, by Christopher P. Cranch, c. 1850.

In addition to the three portraits of Justices, 2011 ended with the gift of a portrait of William Cranch, the Court’s second Reporter of Decisions. Cranch served as Reporter from 1801 to 1815, but was also a longtime U.S. Circuit Court Judge for the District of Columbia from 1801 to



All Portraits Collection of the Supreme Court of the United States

Associate Justice John McLean, by an unknown artist, c. 1850.

1855. Painted from life by Cranch's son, Christopher Pearse Cranch, the portrait had been inherited by Rev. Thomas E. Korson of Denver, Colorado, from his mother. It had been in the family's home in Amherst, Massachusetts, for many



Chief Justice Charles Evans Hughes, by George B. Torrey, 1937.

years. With the gift, the portrait becomes the second of Judge Cranch in the Court's collection. The first, an 1890 copy portrait showing a different pose, hangs in the Reporter of Decisions' office.

All in all, the Court's collection of portraits now numbers over 200 works. As many of these are copy portraits, the Curator and Society continue to seek period portraits and other works as they become available. Today, only two Justices, Thomas Johnson and Philip P. Barbour, are not represented in the collection. As evidenced by what happened this past year, many portraits are still out there to be located, so if an "Uncle Ralph" is hanging on your wall we hope you will let us know!



Associate Justice Gabriel Duvall, by an unknown artist, c. 1850.



Reporter of Decisions William Cranch, by Christopher P. Cranch.

Matt Hofstedt may be reached regarding potential donations of portraits or any other historic objects, furniture, or artwork at curator@supremecourt.gov

SUPREME COURT MEMORABILIA BRINGS HISTORY TO LIFE

By David A. Wollin*

In his seminal lectures at Yale University that were later published as *The Nature of the Judicial Process*, Justice Benjamin Cardozo famously observed that “history, in illuminating the past, illuminates the present, and in illuminating the present, illuminates the future.”

Years before the Internet made collecting an uninspiring endeavor, I would roam the verdant streets of Georgetown and the surrounding environs of Washington, D.C., in search of history. While others enamored of the hunt focused on the “exciting” branches of government – the President and the United States Congress – my attentions were elsewhere. I was more interested in the nine occupants of East Capitol Street, invariably called throughout the years, in book print, “The Nine Old Men,” “The Brethren” or recently just “The Nine.”

The history of the Supreme Court, of course, is rendered in a tapestry of decisions woven through the centuries commencing with *West v. Barnes*, 2 Dallas 401 (1791). However, the Court is much more than the words that have filled the pages of the United States Reports. For most of its history, the Court has been comprised of nine men who had often held significant positions of power and prestige before their ascension to the bench. Supreme Court Justices have included a former President, Secretaries of State and of the Treasury, several Governors and Senators and a smattering of Mayors; men who saw battle during the Revolutionary War, fought for the Union and the Confederacy and served a united nation against foreign enemies during the Second World War. In recent years, the Court has included several women, leaders in their own right, all with a remarkable narrative and unique experiences that, like their male colleagues, have shaped their lives and helped inform their decision-making on the momentous issues of the day.

The history of the Supreme Court is also reflected in a grand marble edifice designed by renowned architect Cass Gilbert, Jr., who was best known for the Woolworth Building in New York. At the laying of the cornerstone for the Supreme Court building on October 13, 1932, Chief Justice Charles Evans Hughes remarked, “The Republic endures and this is the symbol of its faith.” Home to the Supreme Court since completion in 1935, the monumental building, designed in

the classical architectural style, manifests the majesty and importance of the Judiciary as a co-equal, independent branch of the national government and a symbol of “Equal Justice Under Law,” as inscribed over the main west entrance of the building.

For collectors, however, the Supreme Court’s history is also contained in historical materials scattered throughout the nation such as photographs, letters, journals, books, newspapers and magazines. These bits of history sometimes referred to as “emphera” reveal the personal side of the men and women who have occupied the nine seats and thus humanize a cherished institution that speaks for all of us. We may be, in the words of John Adams, “a government of laws, and not of men,” but the Supreme Court is made up of human beings with families and traditions and prejudices, political or otherwise.

Collecting memorabilia connects one to the Supreme Court Justices in a way that goes beyond the printed decision and, as such, offers a distinctive insight into the Court’s membership and its vital role in the nation’s governance. Equally as important, it is a way to protect the Court’s heritage so that it is not lost to the vagaries of time and circumstance. Collecting preserves our shared heritage in a branch of government that, by right and deed, is entrusted with the sacred obligation to enforce the rule of law, the essential ingredient of a just and free society.

In that spirit, over the years I have sought out Supreme Court memorabilia in my travels, hiding in dusty shelves of used bookstores, tucked away in dark corners of antique shops, buried among other treasures at flea markets or paper ephemera shows, even in bins of discount retail stores. Consider it a hobby. Consider it an extension of my chosen profession as an attorney at law. Either way, I know that I am respecting and honoring the past and playing a small part in preserving the Supreme Court’s legacy for many years to come.

There are many different types of memorabilia documenting the Supreme Court’s great history. Such discoveries still await the discerning eye, even those who are willing to venture beyond their laptops and smart phones.

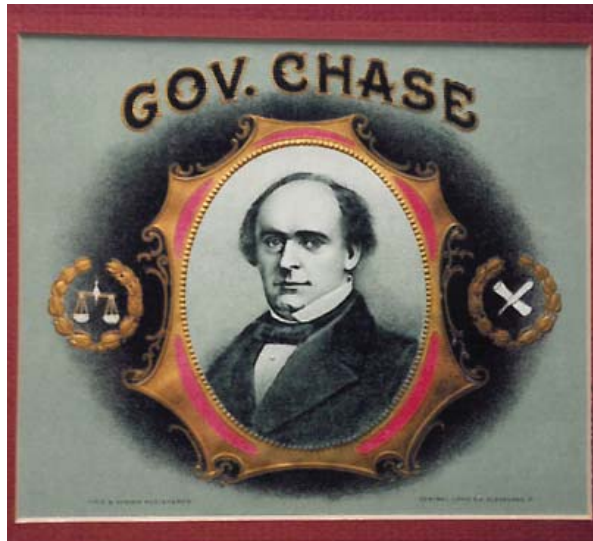


Photo provided by Timothy Crowley

An image of Chief Justice Salmon P. Chase was used on the interior lid of boxes of Governor Chase cigars.

Here is a sampling acquired in nearly three decades of searching:

1. Supreme Court Programs

In the modern era, perhaps no event is of greater significance to the Supreme Court's history than the laying of the cornerstone of the Supreme Court building in 1932. The program for the event indicates that President Hoover laid the cornerstone using a ceremonial, silver and mahogany trowel made from old articles long used in the Supreme Court Chamber. Included in the cornerstone that day, were ceramic photographs of the Supreme Court and the late Chief Justice Taft, the latest volume of the United States Reports and a pamphlet containing the United States Constitution and the Declaration of Independence.

2. Magic Lantern Slides

The Supreme Court's official photo portrait appeared as a magic lantern slide in the early 20th century. Magic lantern slides are transparencies mounted in glass, about 2 by 3 inches in size. Used by magicians and others for centuries to project images for entertainment, they were shown in early slide projectors. The Supreme Court's official portrait from 1910, with Chief Justice Edward Douglass White in his first year in that position, appears on such a slide. White is flanked by such great Justices as Charles Evans Hughes, Oliver Wendell Holmes, Jr., and John Marshall Harlan. It would be Hughes' first term on the bench and Harlan's last.

3. Cabinet Cards

In the late 19th century, Supreme Court Justices often were seen on cabinet cards, a style of photograph that was adopted for photographic portraiture in 1870. Such cards consisted of a thin photograph mounted on cards measuring 4¼ by 6½ inches. Many such cabinet cards exist for the Supreme Court's members, including those for Chief Justice Melville Weston Fuller and his colleagues.

4. Memorial Booklets

At one time, following the death of a Supreme Court Justice, it would not be uncommon for a memorial booklet to be published about the particular Justice. They date back at least as far as the death of Justice Edward Terry Sanford in 1930 and have been issued for Chief Justice Charles Evans Hughes and Justices Stanley Reed, William O. Douglas, John Marshall Harlan, II, and Abe Fortas. Typically, they would contain moving remarks and resolutions in honor of the departed member of the Court.

5. Individual Photographs

For many decades, Supreme Court Justices have had their individual photographs taken in their judicial robes.

Often, these can be found to have inscriptions of interest. For example, Louis Lusky, a legal scholar and a pioneer in the field of civil rights, owned three such photographs personally inscribed to him by Justices William J. Brennan, Jr., Potter Stewart and John Marshall Harlan, II. Lusky is better known as the former law clerk to Justice Harlan Fiske Stone who helped draft what is considered the most famous footnote in constitutional history, footnote 4 of *United States v. Carolene Products Co.*, 304 U.S. 144 (1938). That footnote proposed a heightened level of judicial scrutiny for legislation affecting religious, national or racial minorities.

6. Newspapers

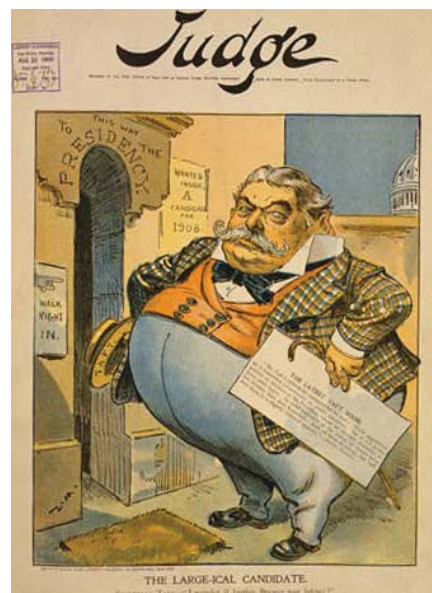
The Supreme Court has been the subject of countless newspaper articles, but perhaps none as significant as the one dated February 6, 1937, from *The New York Times*, under the bold headline: "Roosevelt Asks Power To Reform Courts, Increasing The Supreme Court To 15 Justices; Congress Startled, But Expected To Approve." Seeing a need for "new blood," Roosevelt's plan to "pack" the Court, a term coined by Roosevelt's predecessor Herbert Hoover, would authorize the increase of the Supreme Court from

nine to a maximum of fifteen if Justices reaching the age of 70 declined to retire. Copies of the President's message were distributed to the members of the Supreme Court as they sat on the bench. As the headline reflects, the newspaper predicted Roosevelt's reforms would pass in Congress because of three factors: "the resentment in Congress at recent decisions of the Supreme Court holding its acts invalid, the continuing faith of the so-called 'liberal' element in Mr. Roosevelt and his works, and the unquestioning loyalty of the leadership in both houses to him and his program." Needless to say, history would prove this prediction wrong and Roosevelt's Court-packing plan went down in defeat, but not before the Supreme Court would reverse course and uphold, by a 5-4 margin, a Washington state

minimum wage law in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), after Justice Owen J. Roberts switched sides and joined the members of the Court sympathetic to the New Deal. Facing negative public reaction, Roosevelt's plan eventually died following the retirement of one of the conservative, anti-New Deal Supreme Court Justices, and the unexpected and sudden death of the Senate Majority Leader Joseph Robinson of Arkansas, the legislation's champion.

7. Magazines

For at least 150 years, the Supreme Court and its individual Justices have been the cover subject of major magazines, from *Harper's Weekly* and *The Literary Digest* to



A cartoon of William Howard Taft titled "A Large-ical Candidate" appeared in an issue *Puck* magazine.

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Continued on page 10

Life, Time and Newsweek. As an early example, the February 1, 1868, edition of *Harper's Weekly*, a scant few years after the Civil War ended, contained a two-page engraving of the entire Supreme Court with Chief Justice Salmon P. Chase, successor to Roger B. Taney, at the helm. *Harper's Weekly* was an American political magazine based in New York City that ran from 1857 until 1916, featured national and international news, fiction, essays and humor and was the home of famed political cartoonist Thomas Nast. *Harper's Weekly* notes that the sketch was prompted by a bill pending in Congress further regulating the jurisdiction of the Supreme Court, which held sessions for hearing arguments and deciding causes, unlike current practice, "commencing on the first Monday of December and continuing through the winter, a greater or less time according to the amount of business before it."

More recently, Chief Justices William Howard Taft, Fred M. Vinson, Earl Warren and Warren Burger and Justices Louis Brandeis, Benjamin Cardozo, Hugo Black, Abe Fortas and Thurgood Marshall have been prominently featured on the covers of *Life, Time* or *Newsweek*. The same is true of *The New York Times Magazine*, the headline capturing the theme of the accompanying article: "A Candid Talk With Justice Blackmun" (1983); "The Partisan, A Talk With Justice Rehnquist" (1985); "A Life On The Court, A Conversation With Justice Brennan" (1986); "Justice Souter: A Surprising Kind of Conservative" (1994); and "The Unlikely Liberal" (Justice John Paul Stevens) (2007).

8. Books

The number of books discussing the Supreme Court or the individual Justices, particularly biographies, is staggering. Over the years, many of these books have received critical or popular acclaim. For instance, Merlo Pusey's two-volume biography of Charles Evans Hughes, who served as a Supreme Court Justice, resigned and then later became Chief Justice, won both the Pulitzer Prize for Biography and the Bancroft Prize. For collectors, finding a book with an inscription from the author, the Justice or a relative is particular rewarding. For instance, in *The Memoirs of Chief Justice Warren* (1977), his wife Nina wrote an inscription describing Chief Justice Warren as always trying to demonstrate "courage, perseverance and [a] sense of fair play" during his many years in public service. Looking back at the extraordinary constitutional changes that occurred during Warren's tenure, it is hard to imagine, as he recounts in his *Memoirs*, that he felt overwhelmed and unprepared for the job: "The day of my induction as Chief Justice of the United States was for me at once the most awesome

and the loneliest day of my public career. As I mentioned earlier, I approached the high office with a reverential regard and with a profound recognition of my unpreparedness to assume its obligations in such an abrupt manner." Warren confirms that President Eisenhower "had been disappointed in Justice Brennan and me; that he had mistakenly thought we were 'moderate' when he appointed us, but eventually had concluded otherwise." Warren's response to Eisenhower: "I replied that I had always considered myself a moderate."

9. Letters

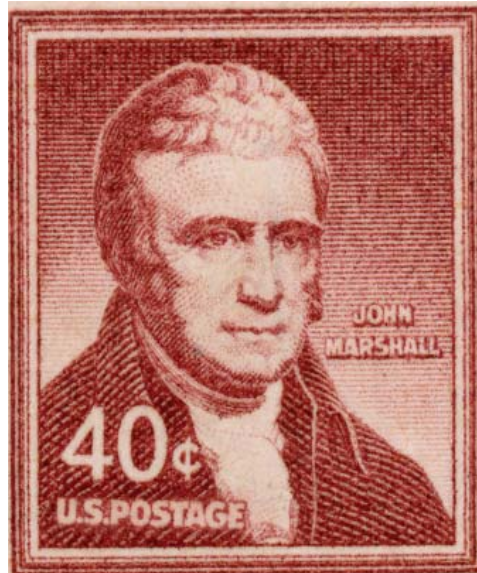
In the age of the Internet, Twitter and email, letter and note writing are often-forgotten, even quaint, forms of communication. In a bygone era, however, such exchanges were a common method of contact, and scores of letters and notes from Supreme Court Justices give a brief window into their thoughts. In 1963, Justice William O. Douglas wrote such a note to his then-wife Mercedes about the James Madison Lecture he had delivered at New York University

School of Law entitled "The Bill Of Rights Is Not Enough." That lecture, together with those presented by Chief Justice Earl Warren and Justices Hugo L. Black and William J. Brennan, Jr., were later published in a book entitled *The Great Rights* (1963). In his note, Justice Douglas remarks that the book "contains the Lecture I gave in Jan[uary] and which almost killed me last Spring." The inspiring words of his lecture still have relevance nearly fifty years later: "The more tolerant of the unorthodox we are, the more respectful of minorities we become, the greater the chance of realizing the rich dividends of a Free Society. The greater our insistence on fair procedures by government,

the greater the confidence in government. The more we encourage pluralistic tendencies at home, the greater our ability to manage the critical affairs of the world."

10. Political Collectibles

Many Supreme Court Justices were heavily involved in politics before ascending the bench. Of course, Chief Justice Taft is the person who comes readily to mind, since he is the only President to have served on the Supreme Court. However, there have been other Justices heavily involved in political campaigns. Chief Justice Charles Evans Hughes ran for the Presidency in 1916 and was featured on campaign buttons which still exist today. He would eventually lose to Woodrow Wilson in one of the closest races in American political history. Chief Justice Earl Warren ran as the Vice Presidential candidate with New York Governor Thomas E. Dewey in 1948 and was featured on various campaign literature. Favored to win against the unpopular incumbent



John Marshall appears on four U.S. Postage Stamps

Image Courtesy Office of the Curator

Harry S. Truman, Dewey and Warren eventually lost in a stunning upset despite the famously inaccurate banner headline from the *Chicago Tribune* that “Dewey Defeats Truman.”

In more modern times, confirmation proceedings for the Supreme Court vacancies have become political campaigns of a different sort, with various interest groups weighing in on the qualifications of the nominees. For instance, during Justice David Souter’s confirmation hearings in 1990, abortion rights advocates protested outside the hearing with signs and buttons reading “Stop Souter, or Women Will Die.” Two years later, Justice Souter would play a pivotal role in upholding abortion rights.

11. First Day Covers and Commemorative Stamps

Supreme Court Justices have been the subject of commemorative stamps and first day covers. First day covers typically are stamped envelopes or postal cards processed at the post office where the stamp was issued and has a cancellation indicating the same. First day covers often will be specially designed for the occasion and say “First Day of Issue”

or a similar designation. A ceremony even may be held to commemorate the first day of issue. Commemorative stamps have included Chief Justices John Jay (15¢), John Marshall (25¢ and 40¢), William Howard Taft (22¢), Charles Evans Hughes (4¢), Harlan Fiske Stone (3¢) and Earl Warren (29¢) and Justices Joseph Story (44¢), Oliver Wendell Holmes, Jr. (15¢), Louis Brandeis (44¢), Hugo Black (5¢), Felix Frankfurter (44¢), William J. Brennan, Jr. (44¢) and Thurgood Marshall (37¢). The Court building has been depicted several times too, from the National Capital Sesquicentennial in 1950 (3¢) and the American Flag flying over the building in 1981 (20¢) to the Bicentennial of the Court in 1990 (25¢). Even momentous decisions have been depicted in first day covers such as the date that President Nixon announced he was naming Lewis F. Powell, Jr., and William H. Rehnquist to the Supreme Court (October 21, 1971), and several years later when the Court ordered Nixon to surrender 64 White House tape recordings (July 24, 1974).

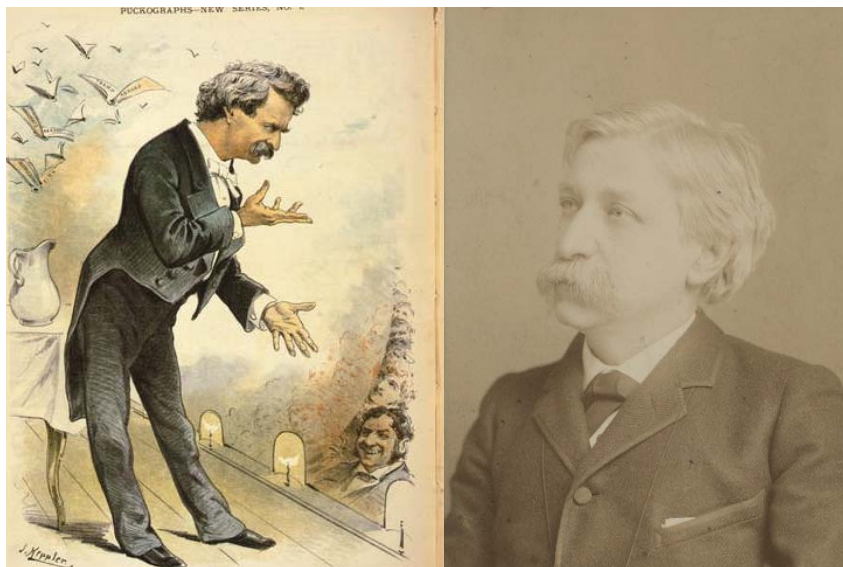
12. Postcards

Postcards have existed since the mid to late 19th century, and the Supreme Court has not escaped notice as a subject. Such cards have shown not only the Supreme Court

building itself and the Court’s official portrait, but certain of the Justices’ residences, most notably Chief Justice John Marshall’s house that he built in 1789 in Richmond, Virginia. A common postcard is the Supreme Court’s chambers when it was housed in the U.S. Capitol, beginning in the session of February 1819.

The foregoing just scratches the surface of the types of memorabilia that serve to document the Supreme Court’s legacy. One can even find Supreme Court Justices depicted in plays, movies, novels and other literary projects. Of all that I have acquired throughout the years, my favorite possession comes from the turn of the 20th century: The official portrait of the Supreme Court from 1907. Chief Justice Fuller sits at

the center, surrounded by some of the giants of that era – Justices Oliver Wendell Holmes Jr., John Marshall Harlan, David Josiah Brewer and the future Chief Justice Edward Douglass White. Bearing a resemblance to Mark Twain, Chief Justice Fuller’s “small stature, his silver hair and mustache, his bright, sensitive, and poetic face gave him a rugged and patriarchal aspect and made him, it was said, the most striking man in



Author and humorist Mark Twain (left) and Chief Justice Melville W. Fuller bore a remarkable resemblance to each other.

Washington.” Indeed, on one occasion, an admirer of the Chief Justice stopped Twain on the street and demanded Fuller’s autograph, and the humorist immediately wrote:

“It is delicious to be full,
But it is heavenly to be Fuller.
I am cordially yours,
Melville W. Fuller.”

**David A. Wollin is a shareholder at the law firm of Adler, Pollock & Sheehan in Providence, Rhode Island. He is an adjunct professor at the Roger Williams University School of Law and has served as the Society’s state membership chair.*

Endnotes and a copy of this article can be found online at <http://supremecourthistory.org> under the Publications/Quarterly Newsletter section.

One photograph appears courtesy of Timothy Crowley, who is also a collector of Supreme Court Memorabilia. His article describing his experiences collecting appeared in Vol. XXII No. 3, 2001 of the Quarterly.

Hail to the “Chef Supreme”: The Recipes of Marty Ginsburg

In the Fall of 2011, the Society was the recipient of national press coverage. There were reports on National Public Radio, and newspapers across the country, along with a number of postings on blog sites. The subject was the delightful and unique cookbook, **Chef Supreme**. A first-of-its-kind for the Society, the book is something of a “greatest hits” selection of recipes culled from the private files of Martin Ginsburg. Publication correlated with the 2011 holidays and the wide-spread publicity spawned a large demand for the book. For a period of about two weeks, the processing and fulfilling of cookbook orders superseded almost every other task for the Society’s staff. Once the packing “peanuts” settled, approximately 5,000 books had been sold. But the book is far more than a big-seller and a cookbook.

The volume was conceived as a fond tribute to the memory of the late Martin Ginsburg, husband of Justice Ruth Bader Ginsburg. This unique remembrance was created by the spouses of the Justice’s colleagues on the Supreme Court Bench. Martha-Ann Alito, wife of Justice Samuel Alito, is credited with the idea for the book. Mrs. Alito explained that the idea occurred to her the day after the memorial service honoring Martin Ginsburg, and sprang from

her personal associations with him. In an interview with Nina Totenberg she explained that “[O]ne of my first conversations with Marty, in the fall of 2006, was about food and nourishment, and how satisfying an expression of love cooking was for him. And that, in part, led to the idea that we should put the cookbook together.” The book is more than a

collection of recipes. It also includes personal reminiscences from the Justices’ spouses, personal friends and Ginsburg family members, making it a unique tribute to an admired and well-loved man.

Mrs. Alito shared her concept with the other Supreme Court spouses and the book began to develop. Everyone agreed that creating such a book would be a unique and apt tribute to Marty. Professor Ginsburg, as he liked to be called, was a renowned tax attorney, a beloved professor and an accomplished and admired amateur chef and gourmet. Often the beneficiaries of his cooking expertise and creations, the other Supreme Court spouses worked with him to provide the food for monthly lunches of the group. Martha-Ann Alito commented that “[o]ne of the goals as spouses is to be supportive of each other as well as the court family. Marty led the way with perfect pitch. . . . Ginsburg’s culinary creations awed and delighted us.”

Clare Cushman, the Society’s Director of Publications, was enlisted to work with the spouses to develop the book. Of the 150 recipes on the CD Professor Ginsburg created to share with his dinner guests, 47 were selected for inclusion in the book. The editors used several criteria for their

choices, which included selecting recipes that he had cooked often, and recipes that evidenced his keen sense of humor and ability to provide precise directions. The recipes are accompanied by detailed, and often humorous, instructions and comments. In the interest of full disclosure, Ms. Cushman observed that “When the going is going to get tough, he tells



This charming photograph of Justice Ginsburg and Chef Supreme Marty Ginsburg was taken by noted photographer Mari-anna Cook.

you ahead of time.” For example, when providing directions for making his Decadent Chocolate Bombe dessert he cautions that “Only a crazy person would try to make this dessert on a single day.” This caution was appended even though the original recipe covered more than five pages. His sense of humor is also apparent in his instructions for creating chicken liver pâté which involves flaming apple brandy. He reassures the reader that “Your ceiling is not likely to burn.” Reading the book gives delightful insight into Ginsburg’s keen sense of humor, as well as his cooking expertise.

The recipes included are diverse in nature covering such things as gravlax, vitello tonnato and osso buco. There is a six-page recipe for making “the perfect baguette.” But tucked among the more sophisticated items there is a recipe for the grandchildren’s favorite chocolate chip oatmeal cookies. The Professor was a chef for many palates and levels of culinary sophistication.

According to interviews and conversations with Marty Ginsburg in the late 1990s, he took up cooking shortly after he and Ruth married. At the time of their marriage neither of the newlyweds knew much about cooking. After a few less-than-gratifying attempts by his spouse, Marty decided to undertake the cooking duties. In the process, he embarked on a quest to become a true chef by working his way through a copy of **The Escoffier Cookbook** the Ginsburgs had received as a wedding gift. His success at his developing talent was evidenced by the fact that invitations to dinner at the Ginsburg home became highly sought after as early as their law school days, and continued to be coveted throughout his lifetime.

Marty once remarked that “I learned very early on in our marriage that Ruth was a fairly terrible cook and, for lack of interest, was unlikely to improve. This seemed to me comprehensible; my mother was a fairly terrible cook also. Out of self-preservation, I decided I had better learn to cook. . . .” Marty related this many years after they were married and added that “. . . Ruth, to quote her precisely, was expelled from the kitchen by her food-loving children nearly a quarter century ago.” Professor Ginsburg once explained that “my wife does not give me any advice about cooking, and I do not give her any advice about the law. This seems to work quite well on both sides.” Justice Ginsburg once observed that she

never understood her husband’s delight in cooking. “I could spend hours writing an opinion. But when it’s done it’s there on paper, and I can see it again. What Marty made was consumed too quickly, but he didn’t regard it that way.”

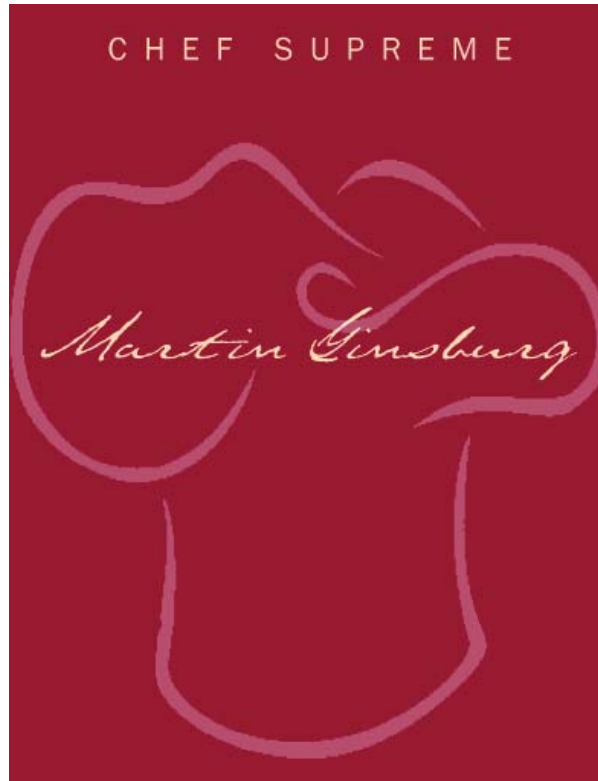
Tributes from the other Justices’ spouses as well as family members and friends are also included in this unusual cookbook. Maureen Scalia observed that Marty would smile supportively at the group evidencing . . . “the enthusiasm with which he approached the creation of a meal . . . as he watched all of us enjoy his work. I could plan, and execute my part of our menu, and see that smile encouraging me.”

Joanna Breyer credited him with giving her enough advice before spouses’ luncheons “to steer me away from complete culinary disaster.” Cathleen Douglas Stone commented that at the recent luncheons for the spouses he was the only man present, but that fact was “unimportant” to him. “He loved being a spouse.”

The pages of the book are enhanced with color images of various items created from the recipes. But the book is also graced by a number of personal family photographs that provide glimpses into the man behind the “Chef Supreme.” The frontispiece photograph is reminiscent of the famous picture “The American Gothic”. In the photograph the Justice Ginsburg wears her robe accented by a large doily at her neck in place of a jabot. Standing alongside her Professor Ginsburg wears a traditional chef’s apron

and gazes down at his wife. Unlike the couple portrayed in the American Gothic, this photograph reveals a warm relationship between the subjects. Professional photographer Marianna Cook captured the twinkle in the eyes of the Chef Supreme, who was still captivated by his bride of many years.

After all the flurry of filling orders during the holiday season, the shop has begun receiving orders for additional copies from recipients who found it so engaging they ordered additional copies to share with friends and relatives. Recently the gift shop received an e-mail message from one satisfied user of the cookbook: “Our Dinner Club did a special Valentine Dinner last night using recipes from the Martin Ginsburg Chef Supreme Cookbook. Everyone enjoyed the menu very much! We toasted Mr. Ginsburg, and the Supreme Court spouses for allowing us the pleasure. Thank you.” We think Professor Ginsburg would be pleased.



Copies of Chef Supreme can be purchased through our Giftshop and online at Supremecourtgifts.org. You may also call +1 (202) 544-8300 to place an order by phone.

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William A. Moorman, Arlington
Jane L. Sheffey, Bristol
Oscar Torres - Luqui, Woodbridge
Ross Weinberg, Woodbridge

West Virginia

Michael Thompson, Shepherdstown

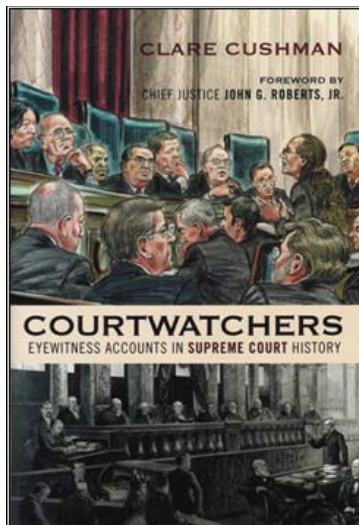
WANTED

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 reach the Society through its website at www.supremecourthistory.org

A Night for Courtwatchers

Prior to the reenactment of *Texas v. Ware* (see page 1 of this issue), the Society honored the publication of **Courtwatchers: Eyewitness Accounts in Supreme Court History**. Written by Clare Cushman, director of publications for the Society, the book was published by the Society in conjunction with Rowman & Littlefield. Society President Gregory Joseph introduced Ms. Cushman referencing the dedication she wrote to the volume: “To my husband and children, without whom I would have finished this book much sooner.” He said he found the statement to be in keeping with the candor and insight found in the volume.

In her remarks Ms. Cushman said that the concept for the volume grew out of her work on other Society publications. She explained that her vision for the book was to create a book “. . . that would please the Supreme Court buffs who love all the inside stories, and through my many years at the Society, I had found some wonderful glimpses into life on the Court written by eyewitnesses. I had always been fascinated by firsthand accounts from Justices, their families, court staff, clerks, journalists, even random bystanders who happened to be in the courtroom and witnessed something interesting. And I wanted the book to appeal both to people who already knew a lot about the Court but weren’t aware of these wonderful stories, and also wanted to engage people who are interested in the Court but don’t want



to read a constitutional history approach to the Court that is all about case law.”

The unique book provides a behind-the-scenes look at the people, practices and traditions that have shaped an American institution for more than two hundred years. Each chapter covers one general thematic topic, weaving a narrative from memoirs, letters, diaries, and newspaper accounts. The accounts come from the Justices themselves, their spouses and children, court reporters, clerks, oral advocates, court staff, journalists and other eyewitnesses. In a book review, Dennis Hutchinson, Editor of *The Supreme Court Review* observed that “Clare Cushman provides a meticulously researched and thoroughly accessible [work] . . . and, for once, the institution emerges with novelistic clarity as a collection of men, and eventu-

ally women, with vivid personalities, strong feelings, and every manifestation of the human condition. Cushman wisely relies on firsthand evidence from those on the inside to provide both authenticity and telling detail.”

Following these remarks, Mr. Joseph and Ms. Cushman presented a copy of the book to Justice Scalia who accepted in on behalf of the Court. The book can be purchased at our website connections supremecourthistory.org, or at supremecourtgifts.org.