DOCUMENT RESUME

ED 174 582 SO 011 883

AUTHOR	Harrell, Mary Ann
TITLE	Equal Justice Under Law: The Supreme Court in American Life.
INSTITUTION	Foundation of the Federal Bar Asscciation Washington, D.C.
PUB DATE	75
NOTE	151p.
AVAILABLE FROM	Foundation of the Federal Bar Asscciation, 1815 H Street, N.W., Washington, D.C. 20006 ($2.50)
EDRS PRICE	MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS	Constitutional History; *Constitutional Law; Court Doctrine; *Court Role; *Federal Courts; Federal Government; Government Role; Justice; Legal Problems; Secondary Education; *Supreme Court Litigation; *United States History
IDENTIFIERS	*Supreme Court; United States Constitution

ABSTRACT

The document describes the establishment, development, procedures, and some landmark cases of the U.S. Supreme Court. The objective is to explore the history of the court and to explain its role in the American system of government. The booklet is presented in four chapters. The first chapter, entitled "A Heritage of Law," offers judicial background from the 1606 Virginia Charter to the Constitution and Bill of Rights. The second chapter, which forms the major part of the document, is entitled "Decisions for Liberty." It traces the court's growth of scope through precedent-setting decisions such as Chisholm v. Georgia in 1793, Marbury v. Madison in 1803, McCulloch v. Maryland in 1819, Gibbons v. Ogden in 1824, Dred Scott v. Sandford in 1857, Munn v. Illinois in 1877, Northern Securities v. United States in 1904, Adkins v. Children's Hospital in 1923, Brown v. Board of Education in 1954, Gideon v. Wainwright in 1963, and Roe v. Wade in 1973. Chief Justices and events are described historically in connection with the cases, from John Jay to Warren Burger, as the court's power as interpreter of the Constitution grew. The third chapter discusses court procedures, staff duties, the building, and the duties of the justices. Chapter IV offers a brief description of the powers and limitations of the federal court system, including contemporary reforms and technical innovations. An index concludes the booklet. (CK)

EQUAL JUSTICE UNDER LAW

THE SUPREME COURT IN AMERICAN LIFE

By MARY ANN HARRELL
National Geographic Staff

THE FOUNDATION OF
THE FEDERAL BAR ASSOCIATION
with the cooperation of the National Geographic Society
WASHINGTON, D. C.

Produced as a public service by the National Geographic Society

Melvin M. Payne	President
Melville Bell Grosvenor	Editor-in-Chief

Prepared by the Special Publications Division

STAFF FOR THIS BOOK

Melvin M. Payne	Editorial Director
Robert L. Breeden	Editor
Donald J. Crump	Associate Editor
Philip B. Silcott	Senior Editor

EDITORIAL STAFF: Jules B. Billard, Bruce Brander, Abigail T. Brett, Thomas Canby, Jr., Dorothy Corson, Barbara Coulter, Richard M. Crum, Johanna G. Farren, Barbara J. Hall, Carolyn Hatt, Geraldine Linder, Margaret C. Shaw, O. Mac White, Peggy D. Winston

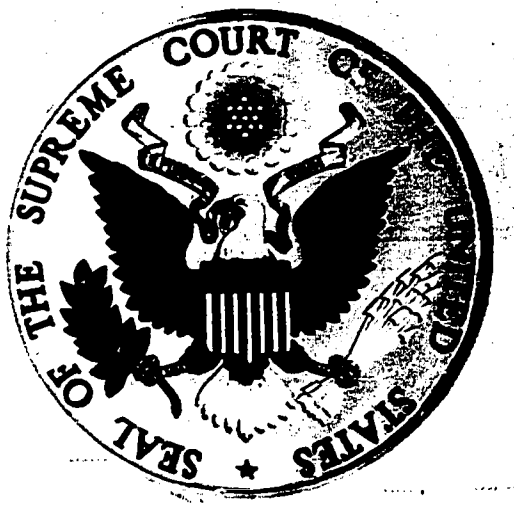
STAFF FOR THIRD EDITION: Merrill Windsor, Managing Editor; David R. Bridge, Picture Editor; Jane D'Alelio, Design; Susan Burns, Research; Mary G. Burns, Jane H. Buxton, Stephanie S. Cooke, Marta Isabel Coons, Suzanne J. Jacobson, Marilyn L. Wilbur, Linda M. Yee, Staff Assistants

PRODUCTION AND PRINTING: Robert W. Messer, Production Manager; George V. White, Assistant Production Manager; Raja D. Murshed, Nancy W. Glaser, June L. Graham, Production Assistants; John R. Metcalfe, James R. Whitney, Engraving and Printing

Third Edition
Library of Congress Catalog Card Number 74-15417

OVERLEAF: *James Earle Fraser's "Contemplation of Justice" sits brooding before the main west entrance of the Court.*

ENDPAPERS: *One hundred Justices have served on the Supreme Court since its birth in 1790. The rows of pictures running horizontally present the jurists, with terms of service, in the order of taking the oath. Asterisks indicate the 15 Chief Justices. John Rutledge was named Chief Justice by a recess appointment in 1795 and served briefly, but the Senate rejected him when it reconvened.*



SOLITARY STAR *below the American eagle distinguishes the Seal of the Supreme Court of the United States. Justices ordered the emblem at their third meeting, on February 3, 1790. Its designers adapted the Great Seal of the United States, adding the star to symbolize the Constitution's grant of judicial power to "one Supreme Court." The Clerk of the Court affixes the Seal to official papers —judgments, mandates, and writs.*

CONTENTS

Foreword 5

A Heritage of Law 6

Decisions for Liberty 15

Within the Court Today 115

The Federal Court System 144

Index 150

Foreword

REVERED AND ABUSED as no other court has ever been, least known of the great institutions of the United States, the Supreme Court holds a unique power in the American system of government—a unique place in the American story.

To tell that story and to explain that power, the Foundation of the Federal Bar Association is publishing this book.

George Washington said that "the due administration of justice is the firmest pillar of good Government." The Foundation works to improve that administration, particularly in the federal courts. It acts for the Federal Bar Association, whose 13,600 members have served or now serve as attorneys or judges for the national government.

Believing that each citizen must be the final judge of good government, it has planned this book to serve the public.

When the First Congress was debating a bill to establish a federal court system, one Representative from New Hampshire expected it to "give great disgust." He could see no reason for a national judiciary, "unless it be to plague mankind." His fears have not materialized. Today this system has begun an unprecedented effort at self-improvement and innovation; and this book includes a report on that program of change.

Most people never enter the federal courts, either as parties to a lawsuit or members of a jury—not even as spectators. They think of the courts as strange and remote if they think of them at all. And they believe, with some validity, that the law is a bramble patch of technicalities and strange words. They might reasonably expect the Supreme Court to be the most remote of all, far from everyday affairs. And yet it is not; it is "supreme," but still very close to the lives and activities of all Americans.

From day to day the headlines announce its decisions, the editorials praise and denounce them, and citizens wrangle about them in law schools and living rooms.

We hope this story of the Court will be part of that debate, which began almost as soon as the Justices started hearing cases. Although we believe lawyers will enjoy it, it is not written especially for them, and legal technicalities are not its theme.

The theme is a national adventure. Its episodes are crises and struggles and conflicts. Its setting is a continent and beyond —and a few small rooms.

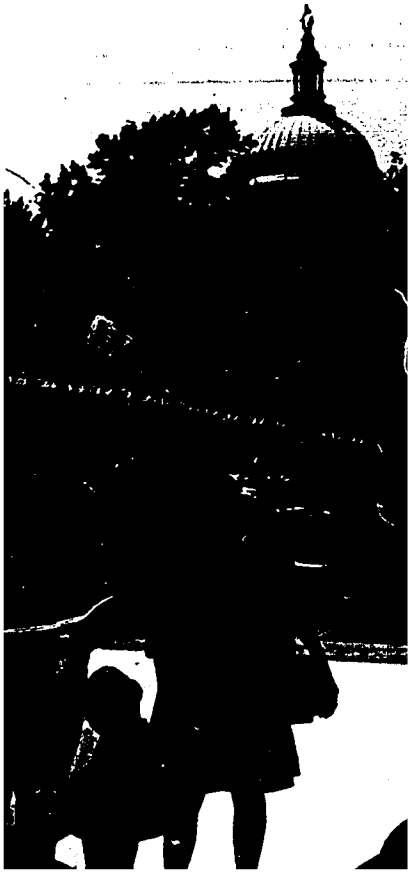
To present this story, Dr. Melville Bell Grosvenor, Editor-in-Chief, and Dr. Melvin M. Payne, President, have generously shared the resources of the National Geographic Society with the Foundation; and we are happy to thank them for their help. In this project, they and their staff colleagues have performed a great service to the Nation.

Members of our Foundation have selected landmark cases and reviewed both text and pictures which follow. The Foundation assumes full responsibility for the contents of the volume, which we are proud to sponsor.

With publication of this edition, the Foundation welcomes a new organization that has joined us in encouraging public interest in the Court: The Supreme Court Historical Society, whose specific purpose is to preserve and extend knowledge and appreciation of the history of the Court and the Nation's judicial system.

For everyone who has worked on this book and for everyone who reads it, we hope it will mean a new devotion to the ideals of the Constitution, to the purposes which have been the special trust of the Supreme Court—"to form a more perfect Union, establish Justice . . . and secure the Blessings of Liberty to ourselves and our Posterity." And we hope it will mean a new pride in law as our way of using freedom.

EARL W. KINTNER
President, The Foundation
of the Federal Bar Association



of the English tradition. But no English judge can say from the bench, as an American judge may say: "The law on the books says thus-and-so; but in spite of the fact that the legislature passed it in due form, this law is void—it is unconstitutional and therefore no law at all."

The English constitution has remained unwritten; it was, and still is, a mass of precedents, and of rules drawn from them. But in America the colonists got used to something else: the idea of one *written* agreement as the basis of government. In 1606 a charter from King James I outlined a plan of government for settlers in Virginia. Before the Pilgrims landed in 1620, they drew up the Mayflower Compact for themselves, with a solemn promise to make and obey "just and equal Laws" for the general good. Royal and proprietary colonies alike had their written charters.

THE COLONISTS came to think of these documents as sharing the sanctity of natural law, the supremacy of natural rights, the solidarity of human society. They were thinking of their charters as we think of our Constitution. Increasingly, many colonists came to regard Parliament's laws on colonial affairs as unjust, even tyrannical. They appealed to the principles of a higher law, which could nullify even Acts of Parliament. Finally, they appealed to arms—they fought the Revolution.

War brought victory; peace brought trouble. America's first constitution, the "Articles of Confederation and perpetual Union," set up a "firm league of friendship," a government so simple it didn't work. Each state kept its "sovereignty, freedom and independence," and every power not expressly given to Congress. That Congress one house in which each state had one vote, had to rely on the states for soldiers or money or law enforcement. Often the states didn't cooperate.

Distressed, George Washington saw that the country had "thirteen heads, or one head without competent powers." John Jay warned in 1783 that Europe watched "with jealousy, and jealousy is seldom idle"—weakness at home might tempt assault from abroad. The states squabbled among themselves over trade; in 1786 James Madison wrote gloomily to Thomas Jefferson about the "present anarchy of our commerce." Protests grew sharper, until Congress reluctantly called for a convention to meet in Philadelphia in May, 1787, "for the sole and express purpose of revising the Articles of Confederation."

The delegates straggled in, elected Washington to preside, and with great courage and good sense disobeyed their instructions. They went to work to create a new government—"a *national* government . . . consisting of a *supreme* Legislative, Executive and Judiciary." Their splendid disobedience produced the Constitution of the United States. It was not the Articles they revised, it was the future.

They invented something new, a plan for power the world had never seen before, an intricate system with both the states and the central government dealing directly with the people.

After long angry debates they compromised on a new kind of Congress, with two houses. After more wrangles they accepted the idea of an executive, a President. Without any argument at all the delegates

"THE LAW, WHEREIN, AS IN A MAGIC MIRROR, *we see reflected not only our own lives," noted Oliver Wendell Holmes, Jr., "but the lives of all men that have been!" Visitors stand at the threshold of the Nation's citadel of law, the Supreme Court. The dome of the Capitol rises in the west.*

NATIONAL GEOGRAPHIC PHOTOGRAPHER JOSEPH J. SCHERSCHEL © N G S

accepted the proposal for a Supreme Court. They agreed on the kinds of cases courts of the United States should try; when they disagreed over details for the lower courts, they left the matter up to the new Congress.

Soberly, for a long time, they thought about the most important problem of all. The country's simple government under the Articles had not worked well. Now the delegates were offering a complicated arrangement with many more points to quarrel about—who should make the final decision in disputes about the Constitution?

TO THIS QUESTION the delegates gave no final answer. But they adopted a sentence to make an answer possible: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof... shall be the Supreme Law of the Land...."

Angry debates and even brawls accompanied the immediate question: Should the people accept this new system? Patrick Henry spoke the fears of many when he cried, "it squints towards monarchy. Your President may easily become King."

And where was a bill of rights? Most of the states had one in their own constitutions, and saw dangers in a document that failed to provide a list of liberties. Pamphlets came thick and fast. Some cried:

That the convention in great fury
Have taken away the trial by jury;
That liberty of press is gone.
We shall be hang'd, each mothers son....

For months the issue was uncertain, because nine of the original 13 states had to ratify the Constitution before it would become law. But by June 21, 1788, the ninth —New Hampshire—had acted.

In the First Congress, James Madison led in drafting amendments to protect the freedom and rights of the people; the states approved them promptly, and, by December 15, 1791, the Bill of Rights was in force.

Now a "more perfect Union" replaced the faltering "league of friendship," and the new nation began its great experiment of liberty under the law. In time, the Supreme Court became the interpreter of the supreme law of the land—not because the delegates provided that it must, but because things worked out that way.

Associate Justice William J. Brennan, Jr., says: "... the Founding Fathers knew better than to pin down their descendants too closely. Enduring principles rather than petty details were what they sought to write down. Thus it is that the Constitution does not take the form of a litany of specifics."

And so disputes over its meaning have continued. But Chief Justice John Marshall declared: "It is emphatically the province and duty of the judiciary department to say what the law is." He warned: "We must never forget that it is a *constitution* we are expounding... intended to endure for ages to come, and consequently, to be adapted to the various *crises* of human affairs."

Charles Evans Hughes, who would become Chief Justice himself, stated the Court's responsibility more bluntly in 1907: "We are under a Constitution, but the Constitution is what the judges say it is."

So the Judges find its words "loaded," as Associate Justice Byron R. White says today. For more than a century the Court has been deciding cases that twine about a single statement, Congress shall have the power to regulate commerce among the several states. On four simple words, "due process of law," the Court has written volumes.

Still, in dealing with constitutional problems, the Court is free to change its mind. Justices have overruled their predecessors and themselves, to correct a decision in the light of experience. They sit as "a kind of Constitutional Convention in continuous session," said Woodrow Wilson. Their

RARE INFORMAL PORTRAIT *shows members of the Court in the paneled and pilastered East Conference Room. From left: Associate Justices Harry A. Blackmun, Potter Stewart, Lewis F. Powell, Jr., Thurgood Marshall, William H. Rehnquist, Byron R. White, William O. Douglas, Chief Justice Warren E. Burger, Associate Justice William J. Brennan, Jr. Scrupulous in observing the proprieties of their office, the Justices seldom pose so casually. Rembrandt Peale's famous "porthole portrait" of Chief Justice John Marshall hangs above them.*

ROBERT S. OAKES, NELSON H. BROWN, (C) N G S

changing views have helped make the Constitution meet the needs of each successive generation. But again and again they have stirred up wrath and controversy.

Before he became Associate Justice, Robert H. Jackson pointed out that Supreme Court Justices derive their offices from the favor of Presidential appointment and Senate confirmation. And they are "subject to an undefined, unlimited, and unreviewable Congressional power of impeachment. . . . Certainly so dependent an institution would excite no fears. . . ."

And yet, he said, "this Court has repeatedly overruled and thwarted both the Congress and the Executive. It has been in angry collision with the most dynamic and popular Presidents in our history. Jefferson retaliated with impeachment; Jackson denied [the Court's] authority; Abraham Lincoln disobeyed a writ of the Chief Justice; . . . Wilson tried to liberalize its membership; and Franklin D. Roosevelt proposed to 'reorganize' it."

You feel this timeless epic when you stand in the empty Courtroom today. Here the voices of famous lawyers seem to come out of the stillness—John Quincy Adams, formidable and old; Henry Clay, taking a pinch from the Judges' snuffbox; Daniel Webster, in his legendary tribute to his alma mater, Dartmouth—"a small college, and yet there are those who love it."

Here is great drama—a Dred Scott case inflaming the passions of a nation. And an attorney, mortally ill, who left a hospital bed to address the Court, then mustered strength to write thanking the Justices for their courtesy before he died the next day.

Here is intense emotion—Justice James M. Wayne during the Civil War years speaking for the Union when his state and his

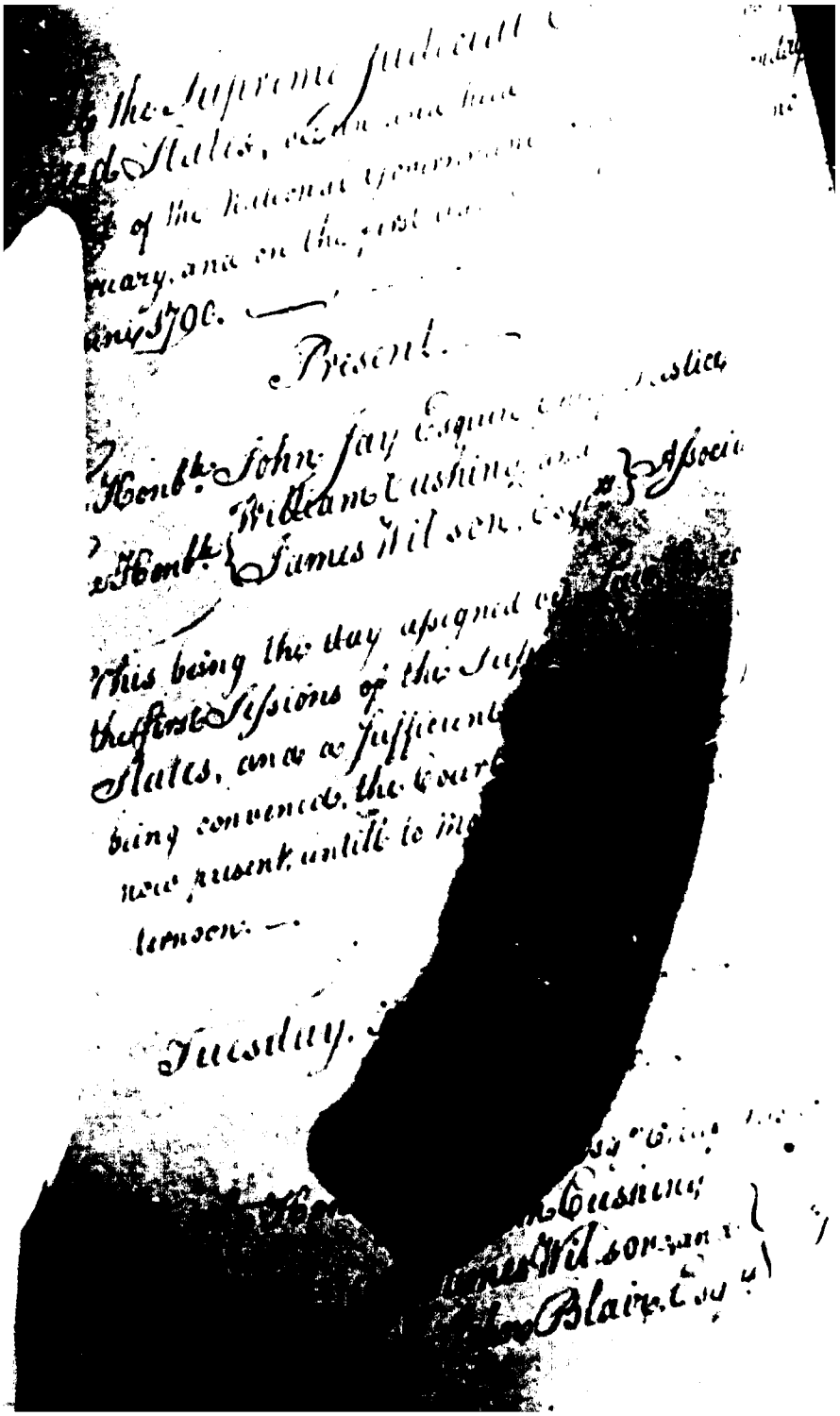
THUNDEROUS ORATOR, *lawyer Dar*
argued the Dartmouth College case
the Supreme Court and won a landi
sion that protected private property
encouraged growth of business corp
in all branches of commerce and in

When the Justices decided this ca
were performing the continuing func
the Court—to interpret the Constitu
and to define the law of the land.

Every citizen has been affected by
of the Court since the early days of
Republic. "It passes on his property
reputation, his life, his all," said Ch
Justice John Marshall, who heard th
Dartmouth College case.

Residents of Hanover, New Hamp
stroll before Dartmouth Hall in this
drawing (above left). When the state
turn Dartmouth from a privately ow
college into a state university, the ce
filed suit and retained Webster, who:
ment became legend. "The question
this," he contended: "Shall our state
ture be allowed to take that which is
own . . . ?" No, said the Supreme Cou
it held for the first time that a charte
incorporation is a contract which no
has constitutional power to impair.

/er
to
ief
ıse
he
he
ci-
he
ity
As
all
ch
se
ng
's-
ıd
of
ne



Decisions for Liberty

WHENEVER JUDGES, lawyers, and legal scholars gather and the talk turns to the Constitution and the men who made it the law we live by, one name inevitably enters the conversation: John Marshall of Virginia.

"My gift of John Marshall to the people of the United States was the proudest act of my life," said John Adams, the second President, years after he left office.

Adams not only chose Marshall for Chief Justice in 1801, he forced a reluctant Senate to confirm the appointment. He had every right to be proud.

Marshall asserted the Court's mightiest power and dignity in its first great crisis. His decisions set the course for a bold venture —a new republic's voyage to greatness among the nations of the world. Those decisions, and many that followed, mirror the history of the Supreme Court and, indeed, of the Republic itself. At the Court today Justices and others still speak of Marshall as the "great Chief."

The Constitution called for a Supreme Court and a federal judiciary, but left it to Congress to spell out the details. Congress did so in the Judiciary Act of 1789. Connecticut's Oliver Ellsworth—later to serve four years as Chief Justice—led the drafting in committee. This law created 13 district courts, with one judge apiece, and three circuit courts, eastern, middle, southern. Above these it set the Supreme Court, with a Chief Justice and five Associates.

For the first Chief Justice, President Washington picked John Jay, New York-born statesman and diplomat. The President weighed sectional jealousies and personal ability in selecting Associate Justices —John Blair of Virginia, William Cushing of Massachusetts, James Wilson of Pennsylvania, James Iredell of North Carolina, and John Rutledge of South Carolina. All had helped establish the Constitution.

But only three of the Judges had reached New York, a temporary capital city, in 1790, when the Court convened for the first time. Required by law to sit twice a year, it began its first term with a crowded courtroom and an empty docket. Appeals from lower tribunals came slowly; for its first three years the Court had almost no business at all.

Spectators at early sessions admired "the elegance, gravity and neatness" of Justices' robes. But when Cushing walked along New York streets in the full-bottom professional wig of an English judge, little boys trailed after him and a sailor called, "My eye! What a wig!" Cushing never wore it again.

In 1791, the Court joined Congress and the President at Philadelphia; it heard discussions of lawyers' qualifications, but little else. Still, other duties exhausted the Justices. The Judiciary Act of 1789 required them to journey twice a year to distant parts of the country and preside over circuit courts. For decades they would grumble, and hope Congress would change this system; but Congress meant to keep them aware of local opinion and state law.

Stagecoaches jolted the Justices from city to city. Sometimes they spent 19 hours a day on the road. North of Boston and in the South, roads turned into trails. Justice Iredell, struggling around the Carolinas and Georgia on circuit, and hurrying to Philadelphia twice a year as well, led the life of a traveling postboy. Finding his duties "in a degree intolerable," Jay almost resigned. Congress relented a little in 1793; one circuit trip a year would be enough.

Sensitive issues appeared in some of the Court's first cases. Its decision in *Chisholm*

FIRST OFFICIAL RECORD *of the Court contains an error in the first line —the word "Judicial." Authorities think the Clerk, a Massachusetts man, inserted it because the highest tribunal in his state was the "Supreme Judicial Court." The National Archives, custodian of such papers, has lent this document to the Court for public display.*

FIRST CHIEF JUSTICE, *John Jay opened the initial session of the Supreme Court on February 1, 1790. President George Washington had named the 43-year-old New York lawyer to head the highest tribunal in the land after Congress had set the number of Justices at six in 1789.*

"He was remarkable for strong reasoning powers, comprehensive views, indefatigable application, and uncommon firmness of mind," said one of Jay's friends. The Federalist statesman set lasting standards of judicial excellence during five years of service as Chief Justice. Jay's Court established an all-important precedent by refusing to advise the President on matters of law; to this day, the Court speaks only on specific cases that come before it for review.

At Washington's request, Jay, still Chief Justice, embarked upon a famous diplomatic mission to Great Britain in 1794 to settle quarrels over British troops in the Northwest and private debts to British creditors. The treaty that Jay negotiated preserved the peace when war might well have destroyed the new Nation.

Jay resigned as Chief Justice in 1795 and became Governor of New York, serving for two terms. His tenure on the bench launched a tradition of high-minded dignity that continues to distinguish the Supreme Court.

v. *Georgia* shocked the country. During the Revolution, Georgia had seized property from men loyal to the Crown. With a pre-Revolution claim on such an estate, two South Carolinians asked the Court to hear their suit against Georgia. It agreed, saying the Constitution gave it power to try such cases. But when the day for argument came in 1793, Georgia's lawyers did not appear. The Court gave its decision anyway, in favor of the South Carolinians.

Georgia raged; other states took alarm. They were trying to untangle finances still snarled from the war. If they had to pay old debts to "Tories" they might be ruined. They adopted the Eleventh Amendment, forbidding any federal court to try a lawsuit against a state by citizens of some other state. Thus the people overruled the Supreme Court for the first time, and established a far-reaching precedent of their own. They would give the ultimate decision on constitutional disputes.

War between Britain and France brought two more basic precedents. President Washington was working desperately to keep the United States neutral and safe; he sent the Court 29 questions on international law and treaties, and begged for advice. The Justices politely but flatly refused to help. Under the Constitution, they said, they could not share executive powers and duties, or issue advisory opinions.

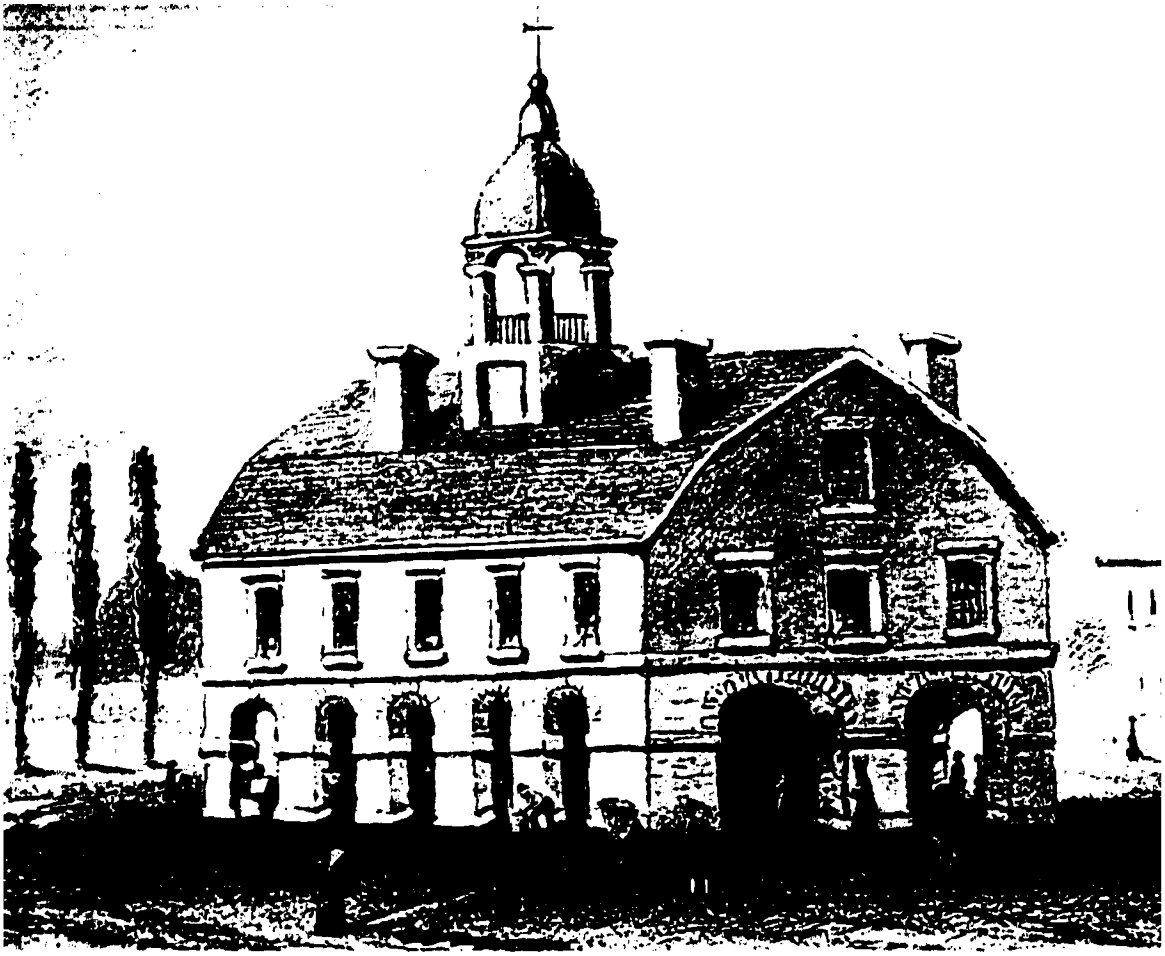
To this day, the Supreme Court will not give advice; it speaks only on the specific cases that come before it.

But by its decision in *Glass* v. *Sloop Betsy*, in 1794, the Court did defend neutral rights and national dignity.

Defying the President's neutrality proclamation, French privateers were bringing captured ships into American ports. There French consuls decided if the ships were to be kept as lawful prize.

Betsy, Swedish-owned, had American cargo aboard when the French raider *Citizen Genet* caught her at sea and took her to Baltimore. Alexander S. Glass, owner of a share of the cargo, filed suit for his goods, but the district court in Maryland ruled that it could not even hear such cases.

With the prestige of the country at stake, the government quickly appealed to the



CUPOLA-CROWNED *Royal Exchange in New York City housed the first meeting of the Supreme Court. Justices deliberated on the second floor of the gambrel-roofed hall. A brick arcade shades the ground floor, an open-air market where Broad and Water Streets intersect. During the first term the Judges appointed a court crier and a clerk and admitted lawyers to the bar, but heard no cases. After two sessions here, the Court reconvened in Philadelphia, the national capital until 1800.*

"UNCOMMONLY CROWDED," *reports the* **New York Daily Advertiser** *(right) of the scene at the Supreme Court's scheduled opening; curious spectators had to wait until the next day to see the Court formally convened. Widely reprinted, such accounts described the "novel experiment of a National Judiciary" for readers throughout the states. Last paragraph [illegible] new location of the federal court that moved out of the Exchange to make room for the Justices.*

[illegible] and [illegible] reading. Adjourned.

THE SUPREME COURT

Of the United States, convened yesterday in this city; but a sufficient number of the Judges not being present to form a quorum, the same was adjourned till this day one o'clock.

The Hon. John Jay, Chief Justice of the United States.

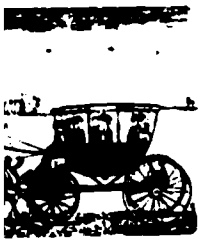
The Hon. William Cushing, and

The Hon. James Wilson, Assistant Justices, appeared on the bench.

John M'Kesson, Esq. acted as Clerk.

The Court Room at the Exchange [illegible] crowded.—The Chief Justice [illegible] other Judges of the Supreme Court of the [illegible] the Federal Judge for the [illegible] of New-York; the [illegible] of New-York; the [illegible] of the district of New York; the [illegible] other officers [illegible] of the [illegible]

[illegible] New York [illegible] the Dutch Church [illegible]



DN,
Sandwich
TAGE,

AS FOLLOWS

hursday, and Saturday morning
, close at Bradford's, Plymouth,
. Leaves Sandwich every Mon
reakfast at Bradford's, Plymouth,
Boston the same evening
Weymouth, Hingham, Scituate,
, Plymouth to Sandwich. *Fare*,
om Boston to Plymouth, 2 dolls
c 63 cts.

DNARD & WOODWARD

"CIRCUITS PRESS HARD *on us all,*" *moaned Chief Justice John Jay. A 1789 Act of Congress, requiring Supreme Court jurists to preside twice a year over circuit courts scattered throughout the Union, meant months of rugged travel.*

Broadside cleft depicts one common mode of transportation. After jolting in a stagecoach many hours daily over savage roads of ruts and rocks or helping lift the stagecoach from quagmires of mud, the Justices passed restless nights in crowded way stations such as Fairview Inn on the Frederick road (above) near Baltimore, Maryland.

Battered and exhausted by the rigors of travel, Judges often arrived at the circuit courts too late or too sick to hold a session. Still, their visits served to acquaint the people with the new judiciary branch.

TATTERED *knee breeches of John Marshall, the Nation's fourth Chief Justice, reveal his lifelong want of bedraggled dress. But his speech was always persuasive, his genial charm unfading, in a courtroom or out of it. Here, at a Virginia tavern during his circuit-riding days, he holds dapper young lawyers spellbound for nearly an hour. One traveler said that to try to describe Marshall's eloquence would be an attempt to paint the sunbeams. Injuries suffered in a stagecoach crash while on circuit hastened his death.*

federal courts would decide American claims, the Justices ruled. Europe heard this decision; and the United States became, as Washington hoped, "more respectable."

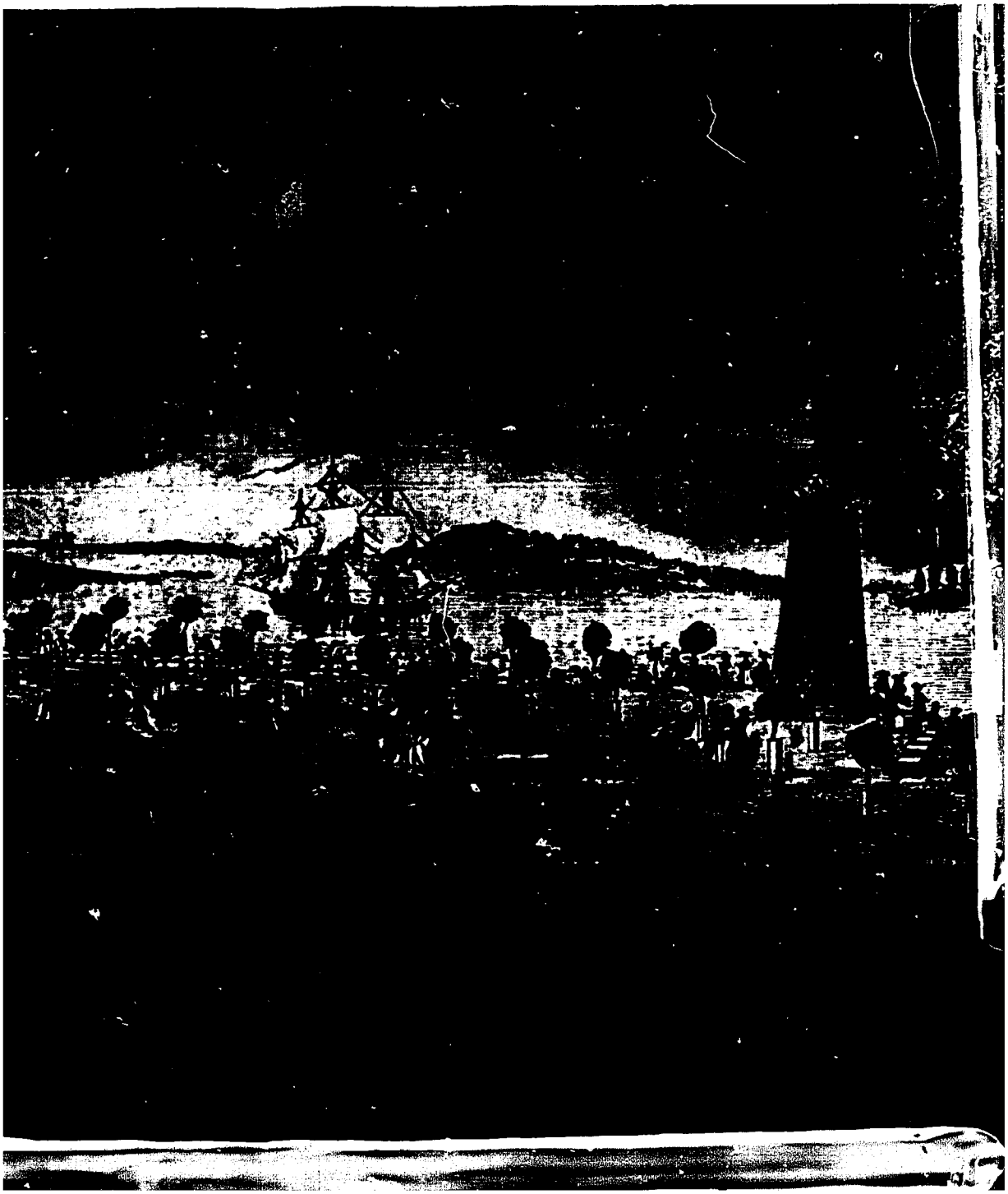
OLD DEBTS AND GRUDGES were troubling relations between the United States and Great Britain. President Washington sent Chief Justice Jay to London as a special minister to settle the quarrels, and Jay negotiated a treaty. When he returned New York elected him Governor, and he resigned from the Court.

To succeed him Washington chose John Rutledge; the Senate rejected the nomination. Patrick Henry, now an old man, declined to serve, and Oliver Ellsworth became Chief Justice.

thought it too favorable to Britain. Feeling still ran high in 1796 as the Court reviewed the case of *Ware* v. *Hylton*. Many British subjects had claims against Americans from contracts made before the Revolution; some states had canceled these by law, but treaty provisions required their payment.

In his only argument before the Supreme Court, John Marshall defended a Virginia law abolishing payments to British creditors; he lost. A treaty of the United States must override the law of any state, ruled the Justices. When the Nation pledges its word, it must keep faith—and the Nation speaks with one voice, not with 13, not with 50.

But two raucous choruses were shouting abuse at each other when the Court met at Philadelphia for the last time, in August,



1800. The government was moving to a new site by the Potomac, where no one had even planned a judiciary building. In 1801 Congress loaned the Court a little ground-floor room in the unfinished Capitol; it crowded the Justices for seven years.

Changing capitals was easier than changing the government. With vast excitement, the people were tussling with an issue the Constitution ignored; painfully, nervously, they were working out a two-party system.

Against the Federalists, "the good, the wise, and the rich," the party of Washington and Adams, stood the admirers of Vice President Thomas Jefferson—"the Man of the People." Calling themselves Republicans, the Jeffersonians wanted to give the people more of a voice in government; they praised the ideals of the French Revolution, they had nothing but distrust for Britain.

During John Adams's term as President, the French insulted the administration from abroad and the Republicans criticized it at home. Federalists had run the new government from the first. They feared attacks on themselves as attacks on the new Constitution. Hearing French accents in every critical sentence, they passed the Sedition Act of 1798.

This law endangered anyone who spread "false, scandalous and malicious" words against the government or its officers, to "bring them . . . into contempt or disrepute." It would expire with Adams's term of office on March 3, 1801.

"Finding fault with men in office was already an old American custom," writes one historian; "indeed, it had become an

FRENCH FRIGATE L'Embuscade *sails past the Battery of New York City in this contemporary engraving. During President Washington's Administration, French raiders roamed off American coasts, seized merchant ships, and took them into port for French consuls to decide if they were lawful prize. This practice defied the authority of the United States and its right to maintain neutrality in the war between France and Britain. When the French privateer* Citizen Genet *(below left) captured a Swedish ship with American cargo, a federal district judge held that his court had no jurisdiction in the matter. By its 1794 decision in the case* **Glass** v. ***Sloop Betsy****, the Supreme Court declared that American courts would decide all cases within the American domain.*

essential part of the pursuit of happiness."

Supreme Court Justices presided at trials on circuit and sent Republican journalists to jail for sedition. But the Republicans kept on criticizing, and shouting "Tyranny!" The Federalists answered with furious cries of "Treason!"

In the 1800 elections the "Lock Jaw" Federalists were routed—"Mad Tom" Jefferson would be President, his followers would control Congress.

Gloomily, the Federalists hoped that judges could save the Constitution from these "radicals." Chief Justice Ellsworth was ailing; he resigned. Jay refused to serve again. So Adams gave his Secretary of State

CH, LIBRARY OF CONGRESS (ABOVE AND UPPER RIGHT)

all, to the Supreme Court. In
e lame-duck Federalists passed
ace the Court's membership to
Justice for a Republican Pres-
e). Abolishing circuit duties for
and providing other reforms,
up new circuit courts with 16
ms quickly made his appoint-
famous "midnight judges."
one Republican from Kentucky
s's tactics "the last effort of the
insidious and turbulent faction
sgraced our political annals."
ook his oath of office on March
hout precedents and with pas-
g high, the Presidency and the

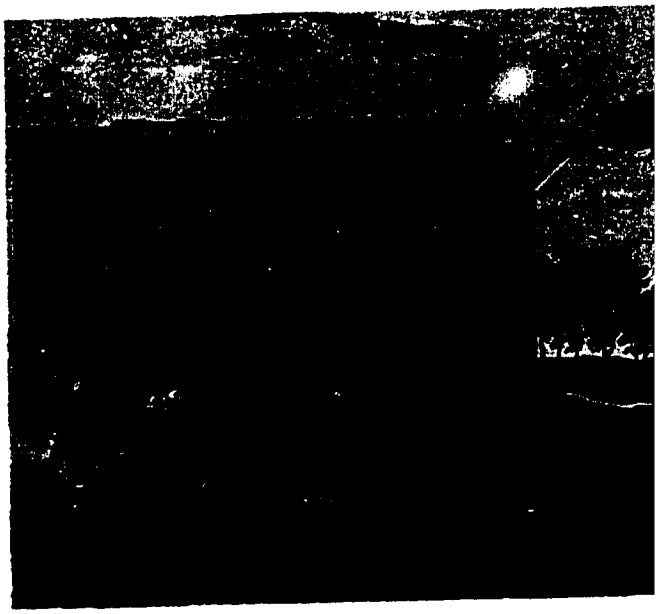
Congress passed for the first time from one party to another. And some citizens were afraid that the judiciary was in mortal danger.

Soon after his Inauguration, Jefferson wrote that the Federalists had "retreated into the judiciary as a stronghold, the tenure of which renders it difficult to dislodge them."

But the Republicans repealed the lame-duck Judiciary Act, while horrified Federalists lamented, "the Constitution has received a wound it cannot long survive," and "the angels of destruction . . . are making haste."

Meanwhile, William Marbury of Washington went straight to the Supreme Court, looking for a commission as justice of the peace for the District of Columbia. Adams had appointed 42 such officials, the Senate frantically confirmed them, and Adams sat at his desk until late on his last night in office to sign their commissions. Then a messenger rushed the papers to the State Depart-

"HILLS, VALLEYS, *morasses and waters,*" *said Thomas Jefferson of the site chosen for Washington, here depicted in 1800. Stone bridge (center) spans Rock Creek near Georgetown (left). In background at right rises Jenkins Hill, where the Capitol stands today. The Senate and the House shared the old North Wing (below), first structure of the Capitol, with the Supreme Court. Here the Justices met in various rooms from 1801 until 1935. During the early years when construction displaced the Judges, they had to meet in nearby homes.*



for Marshall, still acting as Secretary, fix the great seal of the United States. e confusion some of the commissions undelivered. Marbury's among them. December, 1801, Marbury applied to ourt for a writ of mandamus ordering s Madison, the new Secretary of State, ve him his commission. The Court d to hear the case – a bold action, for r was saying the Justices "must fall" mpeachment. Then the Republican ress passed a law stopping the Court's ons for 14 months: another threat. the Justices finally sat again in 1803, heard argument in Marbury's case. he Court ordered Madison to produce ommission, he could simply ignore the . President Jefferson would defend him. If the Court denied Marbury's right to his commission, Jefferson could claim a party victory. Either way the Court's prestige—and perhaps its members—must fall.

Marshall found an escape from this dilemma. He announced the decision on February 24, and proclaimed the most distinctive power of the Supreme Court, the power to declare an Act of Congress unconstitutional. Point by point he analyzed the case. Did Marbury have a legal right to his commission? Yes. Would a writ of mandamus enforce his right? Yes. Could the Court issue the writ? *No.*

Congress had said it could, in the Judiciary Act of 1789. It had given the Court an original jurisdiction in such cases—power to try them for the first time. But, said Marshall

triumphantly, the Constitution defined the Court's original jurisdiction and Congress could not change it by law. Therefore that section of the law was void.

The Court had issued such writs before, but Marshall ignored the fact. He declared for all time the supremacy of the Constitution over any conflicting law. Other judges had said as much, but Marshall added: "It is, emphatically, the province and duty of the judicial department, to say what the law is."

In renouncing a minor jurisdiction he asserted a great one, perhaps the greatest in the long annals of the law. The Supreme Court's power as interpreter of the Constitution rests on this precedent to this day.

A few days after the decision in *Marbury v. Madison*, the Court amazed the Jeffersonians again. They had passed a Judiciary Act of their own, restoring the Court's old membership and circuit duties. The Justices ruled that it was constitutional, and for a while talk of impeachment died down.

"OYEZ! OYEZ! OYEZ!... the grand inquest of the nation is exhibiting to the Senate... articles of impeachment against Samuel Chase, Associate Justice...." The Supreme Court was on trial; if Chase fell, Marshall might be next.

Feared as a "ringleader of mobs, a foul mouthed and inflaming son of discord" when he led the Sons of Liberty in 1765, Chase "was forever getting into some... unnecessary squabble" as a Judge 40 years later. He campaigned openly for Adams. On circuit he tried Republicans without mercy. In 1803 he told a Baltimore grand jury that "modern doctrines" of "equal liberty and equal rights" were sinking the Constitution "into a mobocracy, the worst of all popular governments."

His enemies saw their chance. The House of Representatives voted to bring him before the Senate for trial, charging that his partisan behavior—in and out of court—amounted to "high Crimes and Misdemeanors" under the Constitution.

Vice President Aaron Burr had arranged a special gallery for ladies when the "grand inquest" opened on February 4, 1805. Burr had killed Alexander Hamilton in a duel and New Jersey wanted him for murder; but

"HIS BLACK EYES . . . possess all t
mind that sits enthroned therein.
about a year before his death at
Court in 1801 and presided for
the judicial department. His far
Nation by upholding the powers

t, which proclaims the imperial powers of the
'e of John Marshall, who posed for this portrait
as "the great Chief Justice." Marshall joined the
mpelling force of his logic brought prestige to
s, vitalizing the law to this day, helped mold the
gainst claims for states' rights

Chase on March 1. Jefferson called impeachment of Justices "a farce which will not be tried again," and he was right.

For all his differences with the Republicans, John Marshall was no son of discord. Born in a log cabin near Germantown, Virginia, in 1755, he grew up near the frontier, with some tutoring for an education. He fought as an officer in the Revolution, almost freezing at Valley Forge.

After the war he practiced law, and became the leading Federalist of his state. As a young attorney and an aging Chief Justice, he was sloppily dressed and wonderfully informal out of court, fond of spending hours with friends in taverns, law offices, and drawing rooms. Even in his sixties, Marshall was still one of the best quoits players in Virginia.

When the Court met in Washington, the Justices stayed in a boardinghouse—the trip was too long, the session too short for their wives to accompany them—and Marshall's geniality brightened their off-duty hours.

Justice Joseph Story handed down a tale still told at the Court. On rainy days the Judges would enliven their conferences with wine; on other days Marshall might say, "Brother Story, step to the window and see if it doesn't look like rain." If the sun was shining, Marshall would order wine anyway, since "our jurisdiction is so vast that it must be raining somewhere."

Congress expanded that domain in 1807, creating a new circuit for Kentucky, Tennessee, and Ohio, and adding a seat to the Court. Jefferson appointed Thomas Todd, who had helped create the State of Kentucky out of his native Virginia.

LIFE IN WASHINGTON went on peacefully for months during the War of 1812. "Mrs. Madison and a train of ladies" visited the Supreme Court one day in early 1814, just as William Pinkney of Maryland, one of the country's most celebrated lawyers, was ending an argument; "he recommenced, went over the same ground, using fewer arguments, but scattering more flowers."

Rudely interrupting such diversions, the British arrived in August and burned the Capitol. Congress found shelter in the makeshift "Brick Capitol" where the Supreme Court Building stands today.

The Court, forced to shift for itself, met for a while in a house on Pennsylvania Avenue. Then it got temporary space in the Capitol. In 1819 it returned to its own semicircular room below the Senate Chamber.

"A stranger might traverse the dark avenues of the Capitol for a week," reported a visitor from New York, "without finding the

"I WAS . . . FLOORED," *says Marshall with dry humor as an attendant rushes to the sprawled Chief Justice, who fell from a stepladder in a law library. The mishap reveals Marshall's relish for a joke even at his own expense. He charmed even his critics with his "great good humour and hilarity." Marshall never allowed his mental powers to corrode. He had "one . . . almost supernatural faculty," wrote a lawyer, "that of developing a subject by a single glance of his mind. . . ."*

PARLEY'S REMINISCENCES, LIBRARY OF CONGRESS

remote corner in which Justice is administered to the American Republic. . . ."

Strangers traversing the Republic had other troubles. "I passed away my 20-dollar note of the rotten bank of Harmony, Pennsylvania, for five dollars only," a disgusted traveler complained at Vincennes, Indiana. State-chartered banks, private banks, towns, sawmills, counterfeiters—all issued notes freely. "Engravings," a Scotsman called them; no law required anyone to accept them at face value as legal tender. Everyone suffered from this chaos.

Congress had chartered the second Bank of the United States in 1816 to establish a sound national currency, to issue notes it would redeem in gold or silver. By law, the government owned a fifth of the Bank's stock and named a fifth of its directors; private investors had the rest. Unscrupulous characters got control of the Bank and mismanaged its affairs.

In the South and West, where "engravings" flourished, the Bank's branches made bad loans until the home office at Philadelphia issued new orders in August, 1818: Call in those loans, don't accept any payments but gold and silver or our own notes. Panic spread. Local banks demanded payment on their own loans, and refused to extend credit; people scrambled for money they couldn't find; land went for a song at sheriffs' auctions; shops closed; men who lost their last five dollars said bitterly, "the Bank's saved and the people are ruined."

State legislators decided to drive the Bank's branches out of their domain. Maryland passed a tax law giving the Baltimore

JUDGE ON TRIAL: *Samuel Chase (seated in foreground) hears Representative John Randolph of Virginia accuse him of "high Crimes and Misdemeanors." The House impeached Chase, an outspoken Federalist, in 1805, after he used the bench of a circuit court to denounce Jeffersonian ideals of "equal rights."*

When the Senate acquitted Chase, Republicans gave up the idea of removing Federalist judges by such proceedings. Congress has never used its constitutional powers of impeachment against any other Justice of the Supreme Court.

branch its choice: pay up handsomely or give up and leave. The branch ignored it. Maryland sued the cashier, James McCulloch, and won in its own courts. McCulloch took his case—that is, the Bank's—to the Supreme Court, where argument began on February 22, 1819.

Splendid in his blue coat with big brass buttons, Daniel Webster spoke for the Bank —Congress has power to charter it; Maryland has no power to tax it, for the power to tax involves a power to destroy; and never, under the Constitution, may the states tax the Union into destruction.

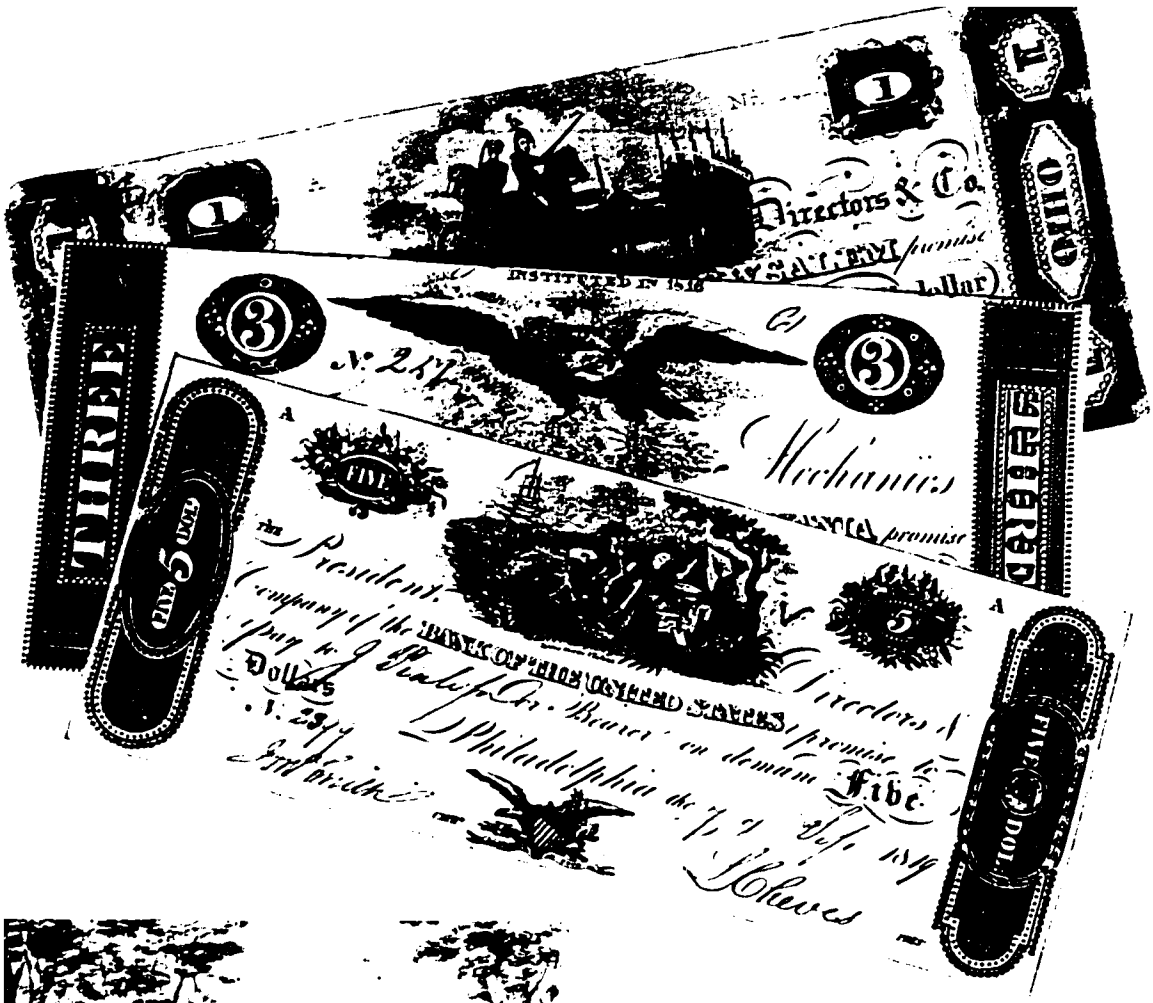
Luther Martin, Maryland's Attorney General, argued for his state. Where does the Constitution say Congress has power to create a national bank? he asked. Nowhere! he thundered. It lists specific powers, and making banks is not one of them. Mr. Webster says it *implies* such a power. Nonsense!

For the Court, Marshall defined the controversy: "a sovereign state denies the obligation, of a law . . . of the Union." An "awful" question, but "it must be decided peacefully." Because the Union is "emphatically, and truly, a government of the people," it must prevail over the states. To specific powers of Congress, the Constitution adds power to make all laws "necessary and proper" for carrying them into effect.

Marshall invoked "letter and spirit" to give that clause its meaning: "Let the end be legitimate, let it be within the scope of the constitution," and Congress may use "all means which are appropriate . . . which are not prohibited." So the Bank was constitutional; no state might tax it. Maryland's law was "unconstitutional and void."

The Court's ruling settled the conflict of law but not the political fight over the Bank's power and states' rights. Virginia's legislature made a "most solemn protest" against the decision in *McCulloch* v. *Maryland:* Ohio officials took money by force from one Bank branch. Not until President Andrew Jackson vetoed the Bank's recharter did that controversy die down.

States' rights against the powers of the Union—the issue became more explosive



WILDCAT "ENGRAVINGS" *of dubious value issued by local banks underlie a five-dollar note from the second Bank of the United States, charted by Congress in 1816 to provide a sound currency. Caught without proper reserves during the financial panic of 1818, local banks had to foreclose on mortgages and auction land (left). People blamed banks in general, and the Bank in particular, for the severe depression that followed.*

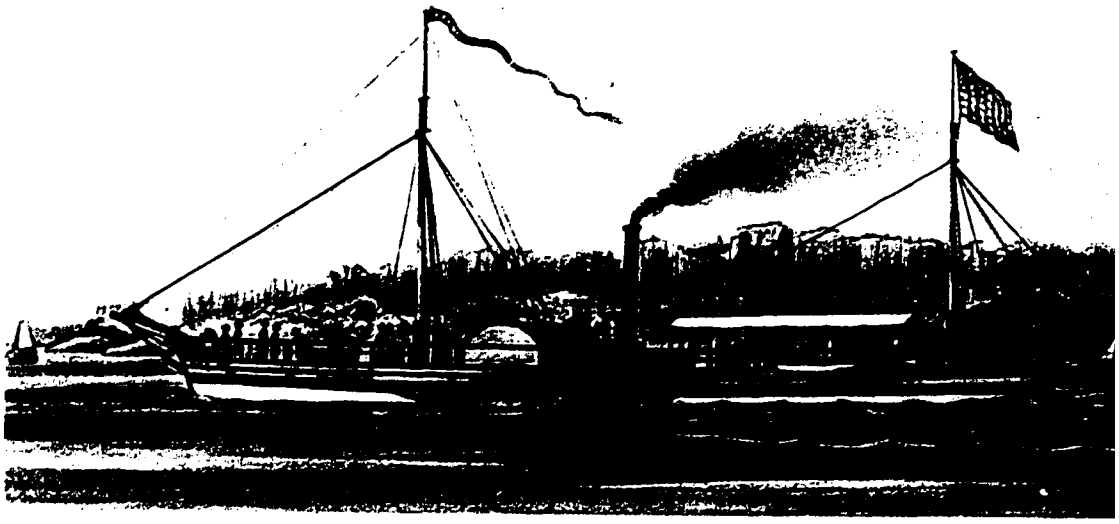
Maryland and other states passed laws levying a heavy tax against the Bank's branches, hoping to close them. When cashier James McCulloch of the Baltimore branch ignored the law, Maryland sued him.

*The Constitution does not say Congress can charter a bank, argued the state (**McCulloch v. Maryland**). But the Supreme Court said the Bank was lawful, ruling for the first time that "implied powers" in the Constitution enable Congress to enact laws "on which the welfare of a nation essentially depends*

BITTER PARTNERS: *Aaron Ogden (left) sued Thomas Gibbons over steamboat shipping rights in New York's harbor (below), claiming exclusive rights under state law. But Gibbons insisted that an Act of Congress permitted his steamboats to enter; and the Supreme Court ruled in his favor. Former Justice Arthur Goldberg has said: "In* **Gibbons v. Ogden,** *Marshall gave the classic interpretation of the Constitution's commerce clause, which made the United States a common market."*

K HISTORICAL SOCIETY (UPPER LEFT), COURTESY WILLIAM L. HOPKINS, JR. (UPP

NEW-YORK HISTORICAL SOCIETY



"DEVIL IN A SAWMILL," *cried one startled rustic as Fulton's steamboat plied the Hudson River.*

Missouri's proposed constitution and states' rights in general. Now what had been a trivial criminal case took on political importance at a time of major crisis.

Appearing for the Cohens were two of the country's most famous attorneys, David B. Ogden and William Pinkney. Ogden flatly denied the sovereignty of any state. Pinkney asserted that if any case involves federal law, federal courts must give the final decision, or the Union is "a delusion and a mockery!"

Congress adopted a new compromise on statehood for Missouri; and Marshall gave an uncompromising ruling on *Cohens* v. *Virginia*. The Court would hear the case; it existed to resolve such "clashings" of state and Union power, to keep the national government from becoming "a mere shadow." Insisting on the power of his Court, the Chief Justice boldly met the threat of secession and the claims of state sovereignty; he upheld the Union as the supreme government of the whole American people.

Then the Court heard argument on the merits of the case, and affirmed the sentence of the Norfolk court. The Cohens lost $100—their fine—and costs.

SOUTHERNERS FUMED at Marshall's stand in the Cohens' case. But in 1824, for once, a Marshall ruling met popular acclaim. Huzzas from the wharves greeted the steamboat *United States* as she chuffed triumphantly into New York harbor, her crew firing a salute, her passengers "exulting in the decision of the United States Supreme Court." That case was *Gibbons* v. *Ogden*.

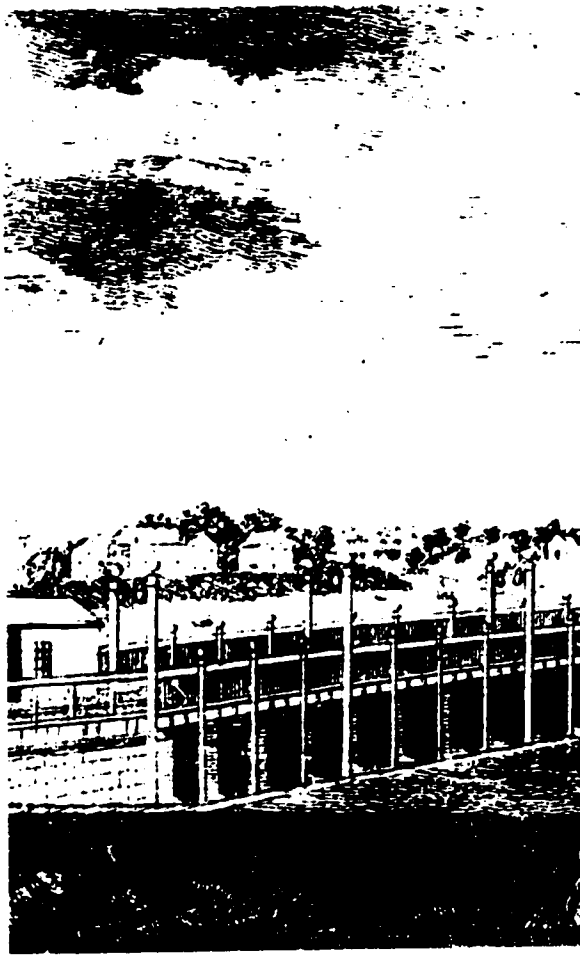
Robert Fulton successfully demonstrated a steam-powered vessel on the Seine at Paris in 1803. With his

"INTEREST OF THE PUBLIC *must . . . always be regarded as the main object" of charters, said Roger B. Taney. As Chief Justice he wrote this view into law in settling a controversy over two bridges at Boston. Proprietors of the Charles River toll bridge (right), under state charter, claimed Massachusetts could not let another company open a competing bridge nearby.*

In this clash of private rights and state powers, a new voice at the Supreme Court spoke for the community. In 1835, President Andrew Jackson had named Taney, his former Attorney General, to succeed Marshall as Chief Justice.

Taney lacked ornate eloquence, but his hollow, low voice and earnest delivery added clarity and persuasiveness to his statements. His defiant stand on citizens' rights during the Civil War brought him public scorn.

*In the bridge case, his first important opinion, Taney ruled that the state had power to approve construction of the much-needed Warren Bridge to serve the people. This decision (**Charles River Bridge v. Warren Bridge**) spanned a gap between established property rights and changing needs.*



CAUSEWAY OF CONTROVERSY: *Charles River Bridge in 1789 ran from the foot of Prince Street in Boston (foreground) to old*

partner, Robert R. Livingston, he held an exclusive right from New York's legislature to run steamboats on state waters, including New York harbor and the Hudson River. In 1807 their steamer splashed up the Hudson to Albany; soon money flowed into their pockets. Anyone else who wanted to run steamboats on those waters had to pay them for the privilege; some Albany men attacked the monopoly in state courts, and lost.

In 1811 the territorial legislature in New Orleans gave the partners a monopoly on the Mississippi. Now they controlled the two greatest ports in the country.

New Jersey passed a law allowing its citizens to seize steamboats owned by New Yorkers; other states enacted monopolies and countermeasures until the innocent

NEW YORK PUBLIC LIBRARY (LEFT) AND GOODSPEED'S BOOK SHOP

Charlestown, Massachusetts. The bridge, then considered a remarkable engineering feat, stretched 1,503 feet on 75 oak piers.

Despite predictions that strong tidal currents or floating ice would collapse the span, it stood more than a century.

side-wheeler was turning into a battleship.

Meanwhile three men of property went into business, then into rages, then into court. Robert Livingston's brother John bought rights in New York bay; then he sublet his waters to former Governor Aaron Ogden of New Jersey, a quarrelsome lawyer. Ogden took a partner, Thomas Gibbons, equally stubborn and hot-tempered. Soon these three were suing one another in New York courts.

Under an old Act of Congress, Gibbons had licensed two steamboats for the national coasting trade, and now he invoked this federal law to get a suit against Ogden before the Supreme Court.

Ladies crowded lawyers to hear the case. Daniel Webster spoke for Gibbons on February 4, 1824; Ogden's attorneys quoted established law and precedents for two days. But Marshall avoided shoals of precedents and veering winds of state laws to set his course by the Constitution—the clause giving Congress power to regulate commerce among the states. For the first time the Court defined these words; in them Marshall found vast new currents of national strength.

More than buying and selling, he proclaimed, commerce is intercourse among nations and states; it includes navigation. For all this rich activity Congress may make rules; if its rules collide with state restrictions the latter must sink. New York's law went down before an Act of Congress.

State monopolies could not scuttle ships "propelled by the agency of fire." Steam-

boats would be as free as vessels "wafted on their voyage by the winds."

With monopolies swept away, steamboat trade spread fast and freely. Soon, by that precedent, steam cars on rails spread across state lines, across the continent.

Marshall watched, as changes came and went. "We must never forget," he had said, "that it is a *constitution* we are expounding .... a constitution, intended to endure for ages to come, and consequently, to be adapted to the various *crises* of human affairs." His actions made his words unforgettable.

When Marshall gave the Presidential oath to his cousin Thomas Jefferson in 1801, the Supreme Court was a fortress under attack. It had become a shrine when he gave the oath to Andrew Jackson in 1829.

New crises arose during Jackson's Administration. Marshall carried on his work, concerned for the country's future but not for his failing health. Jay had resigned after five years, Ellsworth after four; Marshall served from 1801 until his death in 1835. When he took the judicial oath the public hardly noticed; when he died the Nation mourned him. "There was something irresistibly winning about him," said the *Richmond Enquirer*. And *Niles' Register*, which had long denounced his decisions, said, "Next to WASHINGTON, only, did he possess the reverence and homage of the heart of the American people."

BLOODSHED IN THE SENATE: *South Carolina Representative Preston Brooks flails Senator Charles Sumner of Massachusetts after Sumner has unleashed an antislavery speech insulting Brooks's cousin, Senator Andrew Pickens Butler of South Carolina. The attack echoed a crisis in 1856: Would Kansas vote to be a free or slave state? Although the Supreme Court tried to resolve the slavery issue, passions exploded into civil war.*

"WHIRLWIND OF MURDER," *wrote poet John Greenleaf Whittier of the Marais des Cygnes massacre. Near the Kansas border, proslavery riders shoot settlers who would vote for a free state in a fair election.*

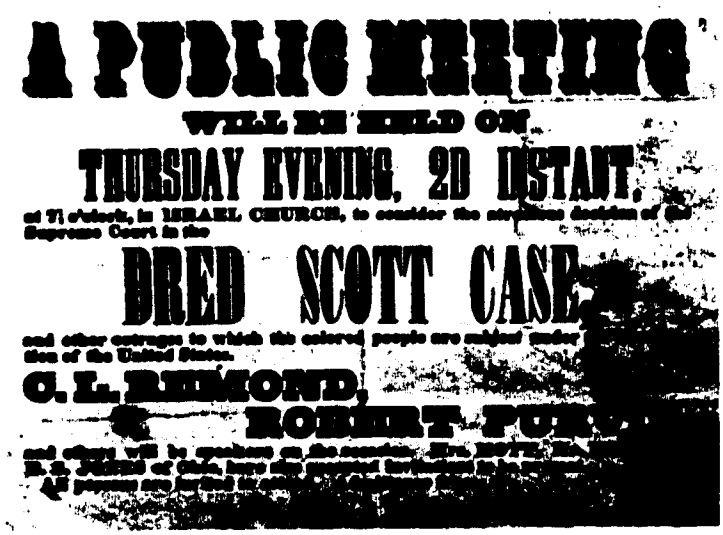
About Marshall's successor, a New York journal sputtered: "The pure ermine of the Supreme Court is sullied by the appointment of that political hack, Roger B. Taney." Daniel Webster confided, "Judge Story.... thinks the Supreme Court is *gone*, and I think so too." The Senate debated the nomination for almost three months.

Born in Maryland in 1777, Taney attended Dickinson College, read law, and plunged into Federalist politics. While other lawyers took pride in oratory, he spoke simply in low tones that convinced juries.

Invoking freedom of speech, Taney won acquittal in 1819 for a Methodist preacher whose sermon on national sins provoked the charge of trying to stir up slave rebellion.

Suspicious of the Bank of the United

NEW YORK PUBLIC LIBRARY (LEFT) AND "BEYOND THE MISSISSIPPI," LIBRARY OF CONGRESS



"ATROCIOUS DECISION" *cries a poster in Philadelphia, where abolitionists shouted their rage and disgust over the outcome of the Supreme Court's most famous case (***Dred Scott v. Sandford***). A slave in Missouri, Dred Scott sued for his liberty, insisting that a sojourn on free soil in Illinois and Wisconsin Territory entitled him to be free. In 1857, the Supreme Court rejected his claim. Chief Justice Taney said no Negro could be a citizen with constitutional rights to bring suit. His opinion wounded the Court's prestige in the North, for it insisted that Congress had no power to limit the expansion of slavery. Northern papers bristled with moral indignation; said one editorial, "If the people obey this decision, they disobey God."*

in the field. . .
rather fight ther
that we will do
In 1846 the
went to war. I
Dred Scott file
Twelve years
Army surgeon,
from Missouri t
west Ordinance
cry. Then he ha
ling, a frontier
the Missouri C
forever. In 183
Missouri. Emer
widow, claimin
soil had made h
Missouri court
Mrs. Emerson
est court ruled
free soil, Scott
law when he we
Scott's was b
it into a feder
courts have jur
citizens of diffe
passed to Mrs.
A. Sanford of Ne
ford" in the rec

CONGRESS

WISPY AND BENT, *Chief Justice Taney administers the Presidential oath of office to James Buchanan in 1857. In his Inaugural Address, Buchanan said the question of territorial slavery would "be speedily and finally settled" by the Supreme Court. Instead, Taney's ruling on Scott only sped the Civil War.*

"HEAP O'TROUBLE," *said Scott of his decade-long lawsuit. After the Supreme Court denied Scott freedom, his owner released him from bondage. Newspaper pictures him with wife and daughters.*

uiming Missouri citizenship, Scott sued ord for his freedom in the federal court Louis. Sanford's lawyers argued that could not be a citizen because he was e and a Negro. The court ruled against , May 15, 1854.

ngress passed the Kansas-Nebraska wo weeks later, opening more of the to slavery by repealing the Missouri promise line. Furious northerners d its author, Stephen A. Douglas, in . On July 4, abolitionist William Lloyd son publicly burned a copy of the Con- on, crying, "So perish all compromises tyranny."

hting broke out in Kansas and made xpansion of slavery the issue in the Presidential campaign, won by James anan. The Supreme Court heard argu- in *Dred Scott* v. *Sandford* in February, reached the end of its term, then heard ient again in December.

then the whole country had heard of Scott. "The Court, in trying this case, lf on trial," said the *New York Courier.* February, 1857, a majority of the Jus- agreed to follow precedent and say ne ruling of the highest state court was -that Scott was a slave under state

FRANK LESLIE'S
ILLUSTRATED
NEWSPAPER

No. 82.—VOL. IV.] NEW YORK, SATURDAY, JUNE 27, 1857. [PRICE 6 CENTS.

TO TOURISTS AND TRAVELLERS.

We shall be happy to receive personal narratives, of land or sea, including adventures and incidents, from every person who chooses to correspond with our paper.

We take this opportunity of returning our thanks to our numerous artistic correspondents throughout the country, for the many sketches we are constantly receiving from them of the news of the day. We trust they will spare no pains to furnish us with drawings of events as they may occur. We would also remind them that it is necessary to send all sketches, if possible, by the earliest steamer.

VISIT TO DRED SCOTT—HIS FAMILY—INCIDENTS OF HIS LIFE—DECISION OF THE SUPREME COURT.

We were standing in the Fair grounds at St. Louis, and engaged in conversation with a prominent citizen of that enterprising city, he suddenly asked us if we would not like to be introduced to Dred Scott. Upon expressing a desire to be thus honored, the gentleman called to an old negro who was standing near by, and our wish was gratified. Dred made a rude obeisance to our recognition, and seemed to enjoy the notice we expended upon him. We found him an examination to be a pure-blooded African, perhaps fifty years of age, with a shrewd, intelligent, good-natured face, of rather light frame, being not more than five feet six inches high. After some general remarks we expressed a wish to get his portrait (we had made efforts before, through correspondents, and failed), and asked him if he would not go to Fitzgibbon's gallery and have it taken. The gentleman present explained to Dred that it was proper he should have his likeness in the "great illustrated paper of the country," overruled his many objections, which seemed to grow out of a superstitious feeling, and he promised to be at the gallery the next day. This appointment Dred did not keep. Determined not to be foiled, we sought an interview with Mr. Crane, Dred's lawyer, who promptly gave us a letter of introduction, explaining to Dred that it was to his advantage to have his picture taken to be engraved for our paper, and also directions where we could find his domicile. We found the place with difficulty, the streets in Dred's neighborhood being more clearly defined in the plan of the city than on the mother earth; we finally reached a wooden house, however, protected by a balcony that answered the description. Approaching the door, we saw a smart, tidy-looking negress, perhaps thirty years of age, who, with two female assistants, was busy ironing. To our question, "Is this where Dred Scott lives?" we received, rather hesitatingly, the answer, "Yes." Upon our asking if he was home, she said,

"What white man arter dat nigger for? why don't white man 'tend to his own business, and let dat nigger 'lone? Some of dese days dey'll steal dat nigger—dat are a fact."

DRED AND HARRIET, CHILDREN OF DRED SCOTT.

DRED SCOTT. PHOTOGRAPHED BY FITZGIBBON, OF ST. LOUIS.

HIS WIFE, HARRIET. PHOTOGRAPHED BY FITZGIBBON, OF ST. LOUIS.

AMID FLYING STONES *and bullets the first Civil War victims fall during a riot in Baltimore in 1861. Southern sympathizers attacked the 6th Massachusetts Regiment, killing four soldiers. Loyal Unionists (left) guarded the office of the city's provost marshal against the mob. The military arrested citizens suspected of disloyalty, rebellion, or treason—including John Merryman, a prominent figure in Baltimore. In Merryman's behalf, Chief Justice Taney sent Lincoln a sharp official protest denying that the President had constitutional power to suspend the protection of law, especially the writ of habeas corpus, in any emergency whatsoever.*

was 1858; Lincoln was cl
A. Douglas for a Senate s
ing the Supreme Court's

Douglas defended the
Scott's case as the pronc
highest tribunal on earth,"
objections to it. "From th
no appeal this side of H

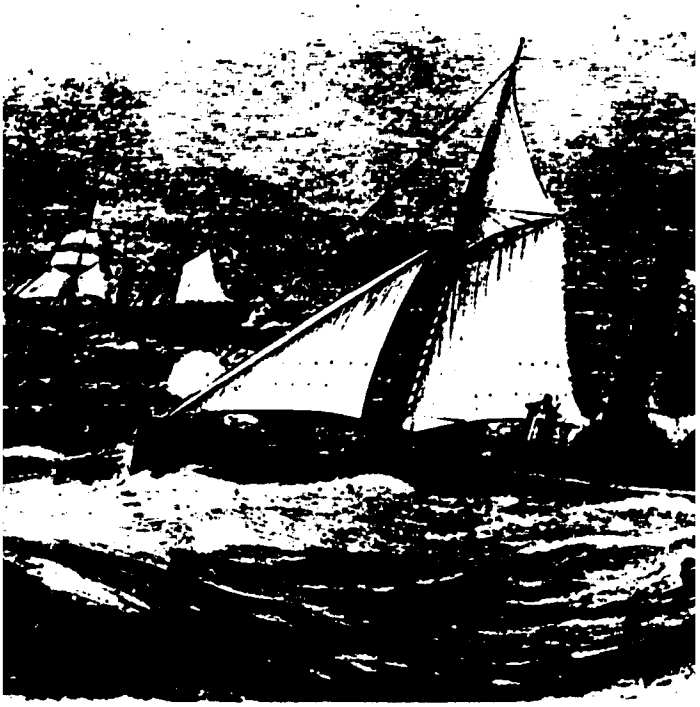
One decision settles c
Lincoln: it does not even
less the future of the cou

Douglas won the Senat
lost the race for the Pr
Republicans came to po

Chief Justice Taney adn
of office to Lincoln, Ma
heard him disclaim "any
Court." But Lincoln war
the policy of the Goverr
questions affecting the w
be irrevocably fixed by
Supreme Court, the insta
in ordinary litigation . . .
have ceased to be their o

That day the first banne
ate States of America fle
house at Montgomery, Al

Secession divided the
Justice John A. Campb



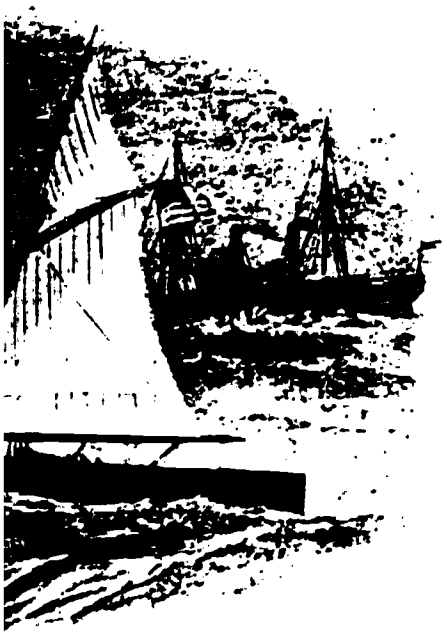
lenging S: ephen
—and challeng-
ling on slavery.
:cision :n Dred
icement of "the
spite of his own
lecision there is
ven," he cried.
case, retorted
tle the law, still
y.
eat; in 1860 he
dency, and the
r with Lincoln.
istered the oath
1 4, 1861, and
sault upon the
l solemnly: "if
ent, upon vital
e people, is to
cisions of the
they are made,
e people will
rulers...."
f the Confeder-
over the state-
ama.
ipreme Court.
who thought

disunion wrong, resigned and went sad
home to Alabama. Justice James Moo
Wayne of Georgia, last survivor of Ma
shall's Court, remained; until his death
1867, he voted to sustain all the war mea
ures the Court passed judgment on.

Justice John Catron, over 70, hurried c
to uphold the laws of the United States c
his secessionist circuit. Tennessee had mac
a military pact with the Confederacy whe
he got to Nashville. Dodging rebel force
he reached St. Louis and held court ther
When he returned to Nashville a citizen
committee drove him out of his home.

In Maryland, part of Taney's circui
many favored the Union, some the Sout
Washington's only railroad to the north ra
through Baltimore, where an angry crow
mobbed troops hurrying to defend the ca
ital. Lincoln told the Army to suspend th
writ of habeas corpus and establish marti
rule, if necessary, to keep Maryland saf

The military jailed citizens on mere su
picion; troops arrested John Merryman fc
taking part in the Baltimore riot and blov
ing up railroad bridges. Locked up in Fo
McHenry, he applied for a writ of habea
corpus—a court order for proof that a pri
oner is lawfully confined.



FAM
Danc
the N
south

GUNS BLAZING, *Union ships (above) chase a southern*
(below) prepares to fire a warning shot across the bow
Lincoln had blockaded southern ports. Owners of captu
that the Union sea barrier was unlawful, brought suit t
that until Congress voted a declaration of war, Lincoln
a blockade. But in the Prize Cases, the Supreme Court
had to fight the war, it said, "without waiting for Cong

HARPER'S WEEKLY (ABOVE AND UPPER LEFT)

Only in "Rebellion or Invasion" when "the public safety may require it" may the privilege of habeas corpus be suspended, says the Constitution.

Hurrying to Baltimore, Chief Justice Taney issued a writ to Gen. George Cadwalader: Bring Merryman to court and explain his arrest. The general sent a letter—he had to consult the President. Taney ordered a marshal to seize the general; but a sentry barred the marshal from Fort McHenry. The Chief Justice challenged the President's right to take legislative and judicial power, calling on him to uphold the law and the courts.

Lincoln did not reply; Congress upheld him. But when the emergency had passed, the government quietly brought Merryman's case to a federal court; later still, it quietly let him go free.

Resignation and death left three seats vacant at the Supreme Court. Lincoln appointed Noah H. Swayne of Ohio, Samuel F. Miller of Iowa, and his old friend from Illinois, David Davis. But no one knew what the Court would do when it heard the Prize Cases in 1863.

Before calling Congress into special session, Lincoln had authorized martial rule in Maryland, called for volunteers, pledged government credit for huge sums, and proclaimed a blockade of southern ports. To meet the crisis of war, the President swept into the realm of legislative power like an invading general. Four merchant ships, seized under Lincoln's blockade orders and condemned as prize, carried his measures before the Supreme Court.

The owners brought suit for the vessels and cargo, arguing that war alone warrants

"GUILTY!" *ruled this Civil War military commission that tried Lambdin P. Milligan, an Indiana lawyer, for conspiring to overthrow the government of the Union. A civilian, he demanded jury trial in a federal court.*

— MILITARY COMMISSION THAT TRIED INDIANA CONSPIRATORS IN 1864.

THE INDIANA HISTORICAL SOCIETY (ABOVE AND RIGHT)

a blockade and only Congress may declare war; they denied that Lincoln's emergency powers had any reality in constitutional law.

If the Court upheld the blockade as a legal war measure, England and France might recognize the Confederacy; if it did not, the government would have to pay huge damages for captured ships, and other war measures would be in question. Either decision would endanger the Union.

Justice Robert C. Grier spoke for himself, Wayne, and Lincoln's three appointees: The President had to meet the war as "it presented itself, without waiting for Congress to baptize it with a name"; and rebellion did not make the South a sovereign nation. Four dissenters said the conflict was the President's "personal war" until Congress recognized the insurrection on July 13, 1861. But the prairie lawyer had won his case.

Chief Justice Taney died, aged 87, in October, 1864. Lincoln's Attorney General Edward Bates wrote that his "great error" in the Dred Scott case should not forever "tarnish his otherwise well earned fame." And not long after Taney's death, victory for the Union brought vindication of his defiant stand for the rule of law.

Army authorities had arrested Lambdin P. Milligan of Indiana, a civilian, tried him before a military commission, convicted him of conspiring to overthrow the government, and sentenced him to hang. With Milligan's petition for a writ of habeas corpus, the Supreme Court considered the problem of military power over civilians.

During "the late wicked Rebellion," Lincoln had authorized such military tribunals. But, said the Justices, the federal courts in Indiana were always open to try

In 1866, the Supreme Court (Ex parte Milligan) held that no military tribunal could try civilians where federal courts were "open and ready to try them" because the Constitution protects "all classes of men, at all times, and under all circumstances."

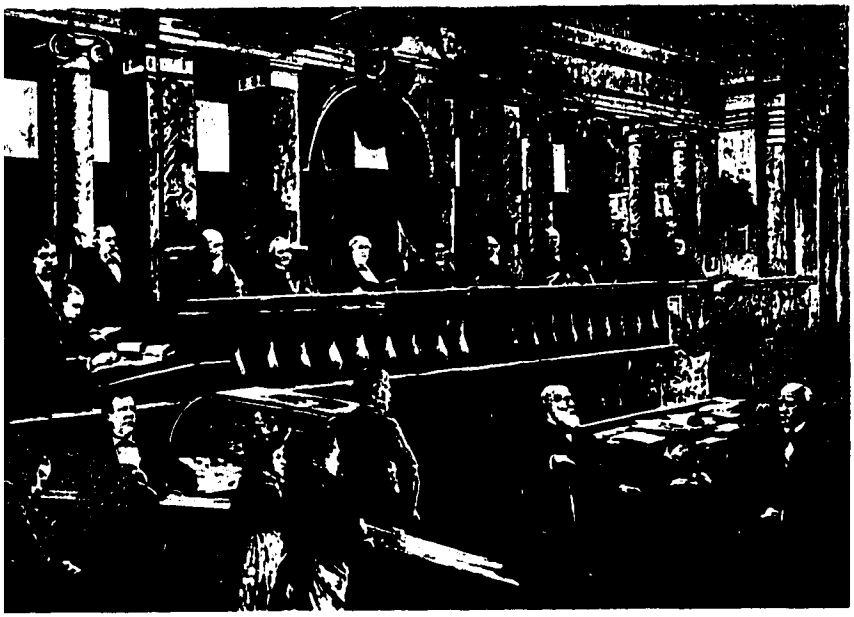
LAMBDIN P. MILLIGAN

THE COPPERHEAD PARTY - [illegible] PROSECUTION OF PEACE!

TREACHEROUS COPPERHEADS, ***members of a northern political faction that sought Civil War peace at any price, threaten the Union in this 1863 cartoon from*** **Harper's Weekly.** ***A southern sympathizer, Milligan plotted with other Copperheads to raid state and U. S. arsenals for a supply of weapons, free captured Confederate soldiers from northern prison camps, arm them, and send them back to fight for the South again.***

LAST SUPREME COURT CHAMBER *in the Capitol receives a famous advocate, retired Justice Stanley Reed, who in 1965 shows his grandchildren, Walter and Harriet Reed, where the Court met from 1860 to 1935. "I was admitted to practice before the Supreme Court on April 4, 1924," he recalls. "The first important case I argued for the government as Solicitor General was here in this room."*

As do all Solicitors General, he performed the duty of deciding which lower court decisions the government would appeal to the Court, what legal stand the government would adopt, and who would argue for the U. S. Reed joined the Court as an Associate Justice in 1938, and served until 1957. Below, in 1888, Chief Justice Morrison R. Waite presides over a Court session in this same room, the old Senate Chamber, sketched for Harper's Weekly.



cases like Milligan's. Therefore, under the Constitution, no military courts could try them; and, however shocking the charges, the defendants kept their rights under law.

At liberty again, Milligan sued the military for false imprisonment, and a jury awarded him damages—five dollars.

"WHAT a potato hole of a place, this!" A western lawyer, seeing the Court's first-floor room in the Capitol in 1859, thought the Justices should be "got up above ground" for some fresh air and daylight. In December, 1860, they finally moved to their new courtroom, the old Senate Chamber. With 12 rooms for their officials and records, they had more space than ever before.

Congress added a tenth seat to the Court in 1863, and Lincoln appo Field of California. To su 1864, he chose Salmon P.

Ambitious and able, Cha for defending runaway sla term in the Senate and two Ohio when Lincoln named I the Treasury in 1861. It finance. Chase grappled w more than $1,000,000 a da radical new tax on income, national banks. But plans notes, the famous "greenba War or no war, he thought, forbade such paper money.

Lincoln sent Chase a n bother himself about the C have that sacred instrum

IMPEACHED PRESIDENT *Andrew Johnson faced Radical Republicans' charges of "high Crimes and Misdemeanors" for ordering Edwin M. Stanton dismissed as Secretary of War. Chief Justice Chase (below) swears in Senator Ben Wade as impeachment court member. If Johnson had been convicted, Wade, as President pro tem of the Senate, would have succeeded him as Chief Executive.*

"FEAR NOT . . . to acquit him," *urged lawyer Henry Stanbery (standing, left) for President Johnson at his impeachment trial in 1868. Here Stanbery addresses Chief Justice Chase (on dais). As prosecutors, Managers for the House of Representatives sit at right. Former Associate Justice Benjamin R. Curtis (seated, center of table at left) argued that Johnson had not violated the Tenure of Office Act, which restricted removal of cabinet officers, and that the Act itself was invalid. Johnson escaped conviction by one vote. In 1926 the Supreme Court said the Act had been unconstitutional.*

LIBRARY OF CONGRESS (UPPER LEFT) AND FRANK LESLIE'S ILLUSTRATED NEWSPAPER

tes citizenship
fringements; in
racial limits on

came President
the number of
d at long last
tem.

led with carpet-
Klansmen, the
o the splendors
Age. Wartime
l debtors liked
and Chase and
ıer themselves
stitution.
rivate lawsuit,
challenging the

Legal Tender Act of 1862 and the Nation's money. Justice Wayne had died; when the remaining Judges discussed the case they divided four to four, as sharply as the rest of the country. Chase was one of those who opposed the law. If you had promised in 1861 to pay a debt in gold, he said, you could not force greenbacks on your creditor; Congress could not impair such contracts.

Then Grier, aged and sadly feeble, changed his vote so that Chase spoke for a majority. Somewhat awkwardly, the Chief Justice struck down in 1870 the law he had reluctantly defended at the Treasury.

Dissenting, Justice Miller insisted: Congress had all the powers it needed to fight a war, including power to change the currency.

Although the Court's decision applied to contracts made before February 25, 1862,

it implied that greenbacks might not be valid for later contracts. It called in question more than $350,000,000 in greenbacks. The government fretted. A Boston newspaper protested bitterly against "the country's being mangled and slaughtered, while the Supreme Court is making experiment upon the laws of currency."

Grier had resigned; Grant named William Strong and Joseph P. Bradley to the Court. They wanted to hear argument in other legal tender cases; astonished lawyers heard the Justices argue furiously on the bench about reopening the money question. After hearing the new cases in 1871, the two new Justices joined the three dissenters of *Hepburn* to overrule that decision.

Strong announced that the Legal Tender Act was constitutional: it helped pay for the war, it saved the Nation. Bradley, concurring, went further: Under the monetary power, Congress could provide for paper money even in peacetime emergencies—a view the Court accepted 13 years later.

Angry editors charged that Grant had packed the
liked greenb
versing itsel

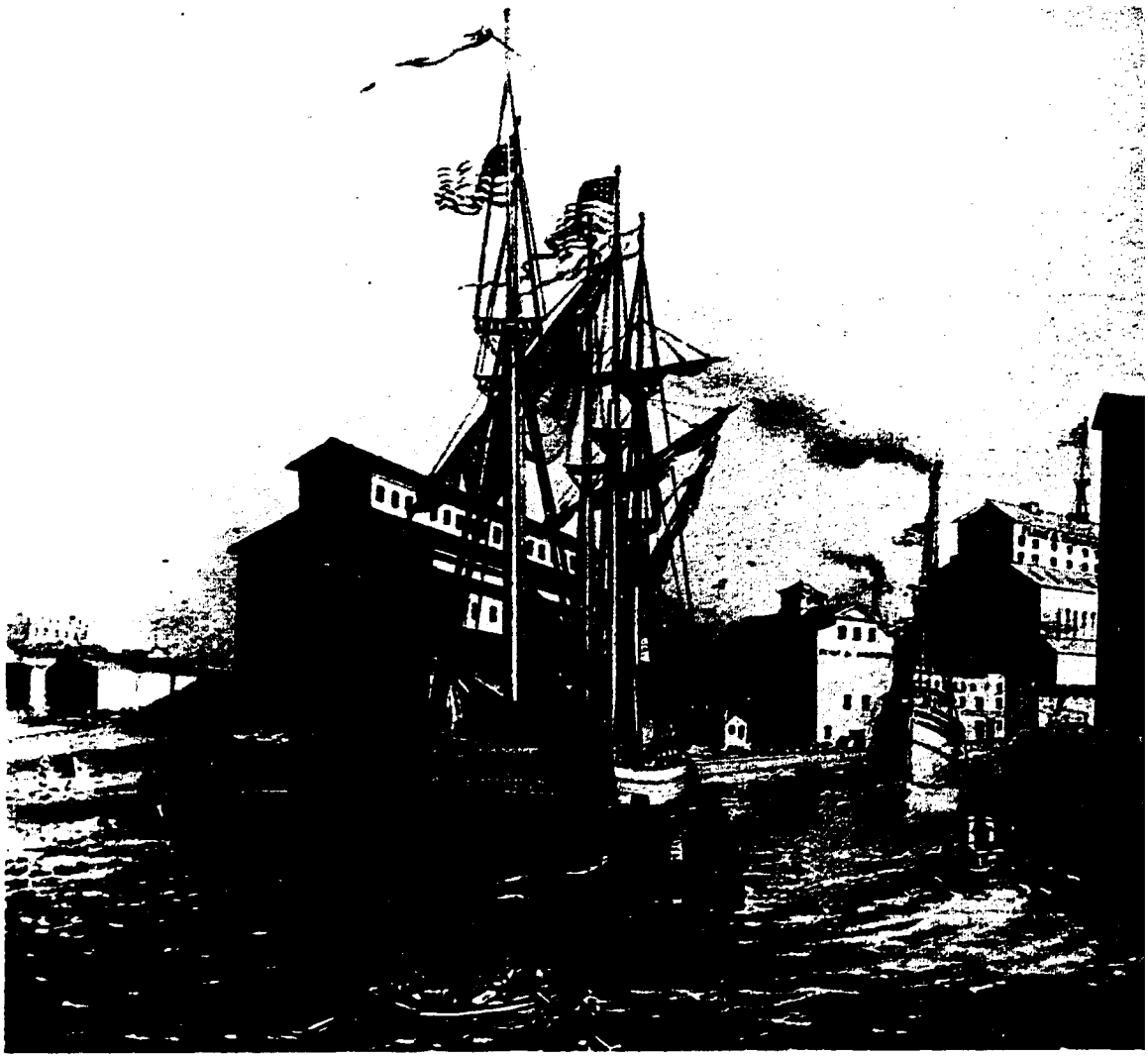
After the s
A Negro gu
to the Supre
funeral. As it
a moment of
Chief Justice

FOR CHA
ate conf
Morrison R.
spectable, t
Ohio lacked
Marshall or

"I am gett
Waite wrote
ington. By l
decision in t
it thoroughl

Corn in
prairie fire c
roads were
that farmers

g a $100 fine for illegal storage
hese laws stood, they argued,
perty would be wrecked.
stices found all these laws valid.
, they thought community rights
s corporation rights. "For us the
one of power," said Waite; when
perty affects the community, the
constitutional power to protect
by law, for the common good.
Munn & Scott had virtual mo-
n grain—so Illinois could exer-
ver to regulate them.
signed a modest role to the
/ must assume that a legislature
acts, they must accept the legis-
he exclusive judge" of when to
ory laws and what to say in them.
oads contended that only Con-
regulate their trade; Waite ruled
ongress did, the states were free
n their own borders.
York Herald said: "either the
ld govern the railroads, or the
uild govern the people. The Su-



preme Court has come to the rescue. . . ."

But Justice Field, dissenting, called the decisions "subversive of the rights of private property." And his dissent would become the majority opinion in later decisions.

The railroads had rushed beyond state borders and laws, and Congress took action. It passed the Interstate Commerce Act in 1887, the Sherman Anti-Trust Act in 1890. Other laws—national and state—to regulate business and working conditions followed as time went by. But time proved that the legislatures were not to be the "exclusive judge." The Supreme Court began to set new limits on state power, although it did not flatly overrule the Granger decisions.

The Court also checked Congressional power. In 1895, a depression year, critics charged that the Court let property rights govern law. Waite had died, Melville W. Fuller had succeeded him as Chief Justice; of the Court that decided *Munn* v. *Illinois* in 1877, only Field survived.

When the Court decided its first antitrust case, the government lost its suit against a company controlling some 98 percent of all sugar refined in the United States. The Court conceded that the trust had a monopoly on making "a necessary of life" but denied that it had a direct effect on interstate commerce. This ruling left the Sherman Act weak, the trusts as strong as ever.

In another case, the Court seemed to ignore the needs of labor. Federal judges, under the Sherman Act, had issued a sweeping injunction against union leaders of the Pullman strike in 1894. Jailed for contempt of court, Eugene V. Debs applied to the Supreme Court for a writ of habeas corpus; the Justices denied it unanimously.

In a third case, the Court heard argument on a new federal income tax law, which took

WAREHOUSES OF GRA
Chicago grain elevato
Munn and George Sco
above the Chicago Riv
Munn ignored an 1871
law that curbed high s
and railway shipping r
state sued. The Supre
ruling (Munn v. Illino
state power to regulate
"affected with a public

CHAMPION OF FA
Grange wakes t
corrupt railroa
Hard-hit by low g
oppressed by high r
warehouse rates, far
the Grange to p
wrongs and fight
th

two percent of all incomes over $4,000. Famous lawyers prophesied communism, anarchy, and despotism if the law survived. With one Justice ill, the rest divided four to four on most of the law's provisions. After reargument, a five-to-four vote made the entire law unconstitutional.

Bluntly, the dissenters called this decision "the most disastrous blow ever struck at the constitutional power of Congress," "a surrender of the taxing power to the moneyed class." John Marshall Harlan (whose grandson of the same name was to serve on the Court in the 20th century) spoke out so sharply that the *New York Sun* called his "tone and language more appropriate to a stump address."

On the stump, William Jennings Bryan said the Court stood with the rich against the poor; other political figures took up the charge. And in 1913 the Sixteenth Amendment made the income tax constitutional after all.

UNDER THE CIVIL RIGHTS ACT of 1875, one of the last Reconstruction laws, Negro citizens brought cases before the Court, protesting their exclusion from a hotel dining room in Topeka, an opera house in New York, the dress circle of a San Francisco theater, the ladies' car on a train. In 1883, eight Justices held the act unconstitutional. The Fourteenth Amendment, they said, only gave Congress power over state action; if private citizens discriminated among one another, Congress could do nothing about it. Harlan of Kentucky, the Court's only southerner, wrote a fighting 36-page dissent.

"TREADMILL *of uninterrupted work," said Chief Justice Morrison R. Waite, as the overworked Supreme Court of the 1880's found cases piling up faster than it could hear them. With a four-year backlog on their hands, the Justices welcomed an 1891 law creating the circuit courts of appeals to settle routine lawsuits.*

To enforce segregation by color, southern states began passing Jim Crow laws, to require equal but separate passenger cars on trains. Homer Adolph Plessy challenged the Louisiana law in 1892, and took his case to the Supreme Court. Its opinion cited many state precedents to show the "reasonableness" of such laws, and found nothing to stamp "the colored race with a badge of inferiority." Harlan dissented again.

"Our Constitution is color-blind," he wrote. "In respect of civil rights, all citizens are equal before the law." Still, the separate-but-equal doctrine of *Plessy* v. *Ferguson* controlled the law for years.

THE SPANISH-AMERICAN WAR gave the United States several heroes, including Col. Theodore Roosevelt; many islands, including Puerto Rico and the Philippines; and one baffling question: Does the Constitution follow the flag? Across the American West, it always had; pioneers took their citizenship with them, and new states joined the Union as equals.

These new islands—separate by ocean, alien by culture—seemed unfit for self-government or statehood. But the Constitution said nothing about colonies of subject peoples, unequal before the law.

In the famous "Insular Cases" the Supreme Court worked out a constitutional status for the new possessions; in effect and by necessity, the Court made law as it went along. Spectacular as the subject was, the Justices were doing the duty of every judge, applying the generalities of law to the demands of the specific case.

Cast-iron pipe and constitutional law bent in the hands of Circuit Judge William Howard Taft in 1898, as he carefully distinguished the case of the Addyston Company and other pipe manufacturers from the sugar-trust case. In the present case, he explained, the facts were diff

These companies conspired to fix p
said Taft, before they agreed with thei
tomers in 36 states to deliver shipme
pipe; therefore they were within inte
commerce and the power of Congress.
fixing restrained trade as surely as pip
tained oil, and Congress had passe
Anti-Trust Act to release trade. Free
prise, Taft insisted, meant free compet

When the Supreme Court affirmed
ruling, other judges had a new preced
follow and the Sherman Act a new vi

Energy personified, Theodore Roo
became President after William McKi
assassination, and faced what he calle
"absolutely vital question"—whethe
United States Government had the p
to control the giant corporations of th

Money personified, the magnificent

Morgan dominated finai
Pacific and other railroa
dollar U. S. Steel Corpora
J. Hill had the Great N
Harriman, with his Sou
Union Pacific routes and
dard Oil, had challenged
for control of a railroad i

After a fight that wrec
ket, the three agreed t
They organized a Holdin
Jersey corporation calle
rities, and leaned back t
nopoly on transportation

Roosevelt ordered the
to enforce the Sherman A
the Supreme Court thei
that only New Jersey cou
Jersey corporation, that
were not within interstat

federal attorneys filed suit under the Sherman Act. After 15 months of testimony that filled 21 printed volumes, federal judges in St. Louis ordered the oil trust broken up.

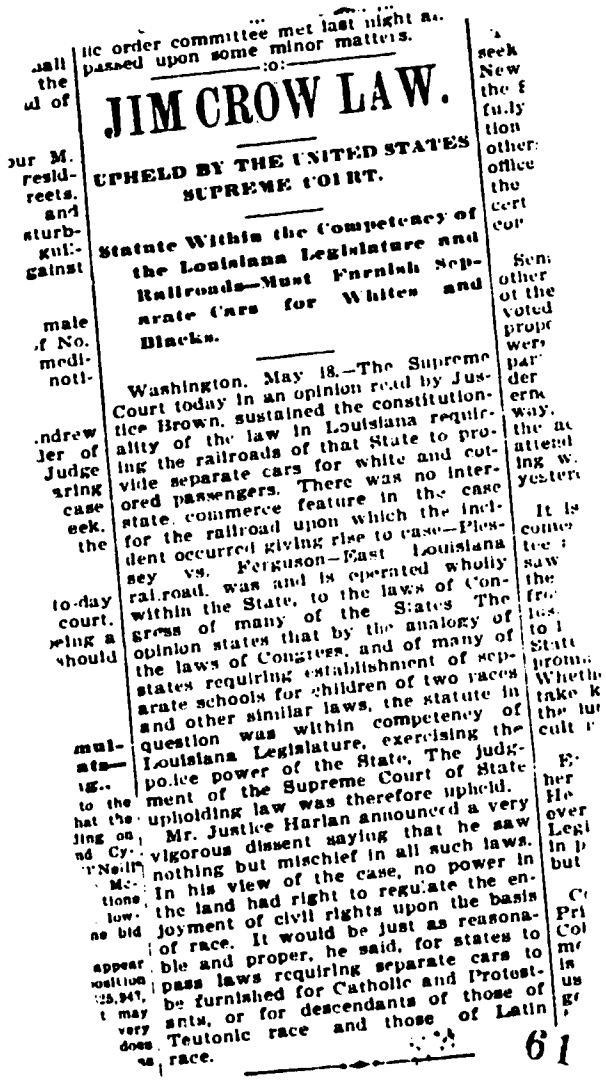
When the Supreme Court reviewed the case, it affirmed the order but altered the law. Congress, said Chief Justice Edward Douglass White, only meant the law to punish "unreasonable" restraint of trade. The "rule of reason" became a rule of law.

"UNREASONABLE, unnecessary and arbitrary," a violation of liberty under the Fourteenth Amendment—thus five members of the Supreme Court held a New York law unconstitutional. This law said bakers must not work more than 10 hours a day or 60 hours a week.

Joseph Lochner had a bakery in Utica, and New York fined him $20 for overworking Frank Couverette. For a second offense, he drew $50 in fines or 50 days in jail. His case reached the Court in 1905.

States, ruled Justice Rufus W. Peckham, must not pass such laws, "mere meddlesome interferences" to keep grown men from taking care of themselves. States have a "police power" to protect the public, but they may not limit such individual rights as liberty of contract: A worker must be free to make his own contract with his employer.

Justice Harlan dissented, citing evidence that bakers suffered eye and lung troubles, that New York might protect their health. And Oliver Wendell Holmes, who had joined the Court in 1902, dissented sepa-



tle order committee met last night a.. passed upon some minor matters.

:o:

JIM CROW LAW.

UPHELD BY THE UNITED STATES SUPREME COURT.

Statute Within the Competency of the Louisiana Legislature and Railroads—Must Furnish Separate Cars for Whites and Blacks.

Washington, May 18.—The Supreme Court today in an opinion read by Justice Brown, sustained the constitutionality of the law in Louisiana requiring the railroads of that State to provide separate cars for white and colored passengers. There was no interstate commerce feature in the case for the railroad upon which the incident occurred giving rise to case—Plessey vs. Ferguson—East Louisiana railroad, was and is operated wholly within the State, to the laws of Congress of many of the States The opinion states that by the analogy of the laws of Congress, and of many of states requiring establishment of separate schools for children of two races and other similar laws, the statute in question was within competency of Louisiana Legislature, exercising the police power of the State. The judgment of the Supreme Court of State upholding law was therefore upheld.

Mr. Justice Harlan announced a very vigorous dissent saying that he saw nothing but mischief in all such laws. In his view of the case, no power in the land had right to regulate the enjoyment of civil rights upon the basis of race. It would be just as reasonable and proper, he said, for states to pass laws requiring separate cars to be furnished for Catholic and Protestants, or for descendants of those of Teutonic race and those of Latin race.

61

RESERVE COLLECTION

"NEXT CAR!" *a conductor directs a Negro family, motioning them to a "Colored Only" coach. Louisiana's Jim Crow Law forbade blacks to sit with whites on trains. Attorney Albion Tourgée (above) argued for Homer Adolph Plessy, a Negro who tested the law by entering a forbidden coach. But the Supreme Court's decision in* Plessy v. Ferguson *proved the temper of the 1890's: Races could be segregated if equal facilities were provided (left). For decades after this decision, its famous "separate but equal" doctrine remained a rule of law.*

THE DAILY STATES, COURTESY LOUISIANA STATE MUSEUM (LEFT), AND PAUL HOFFMASTER

rately, to say that "a constitution is not intended to embody a particular economic theory," that laws might rest on "novel and even shocking" ideas and be constitutional.

Oregon had passed a law to keep women from working more than 10 hours a day in factories and laundries. Curt Muller, owner of a laundry in Portland, Oregon, was convicted of breaking it; he fought his conviction through state courts to the Supreme Court, relying on Peckham's opinion in *Lochner* v. *New York*. He also claimed that the Oregon statute could not meet the Constitution's demand for "due process of law."

Historically, that had meant "a fair trial." But judges were using it to protect property from laws they found unreasonable.

One reform group wanted the best possible lawyer for Oregon's case. Joseph H. Choate of New York turned it down; he didn't see why a "big husky Irishwoman should not work more than ten hours if she so desired." A famous corporation lawyer in Boston accepted—Louis D. Brandeis.

Studying Peckham's opinion in the Lochner case, Brandeis considered its reference to "common knowledge" that baking was a healthy trade. Boldly and shrewdly, he devoted only two pages of his brief to legal points; 100 cited facts from doctors, health officers, and factory inspectors to show that overworked women fell ill, turned to drink, bore sickly children and then neglected them.

No one had ever submitted such a brief to the Court. But the Justices accepted it, and praised him for it in their unani-

"WHY NOT LET ME IN?" *asks Cuba in a 1902 cartoon. "Puerto Rico is inside." Acquiring both islands from Spain in 1898, the United States gave sovereignty to Cuba. It kept Puerto Rico; the island's canefields (below) produced quarrels among sugar growers and a lawsuit over American tariff duties on foreign goods. When the Supreme Court reviewed this case in 1901, it held that tariffs did not apply to U.S. possessions. Such suits posed the question: How does the Constitution apply to unforeseen problems—does it follow the flag? In these "Insular Cases," the Court declared that the Constitution would protect liberty anywhere under the Stars and Stripes, and would give Congress power to govern the new "American empire."*

LIBRARY OF CONGRESS (BELOW) AND PUCK, LIBRARY OF CONGRESS

mous decision to uphold the law of Oregon.

"When an evil is a national evil, it must be cured by a national remedy," cried Senator Albert J. Beveridge of Indiana. Reformers were demanding change in politics, business, society in general; in response, Congress was assuming a "police power" for the whole country.

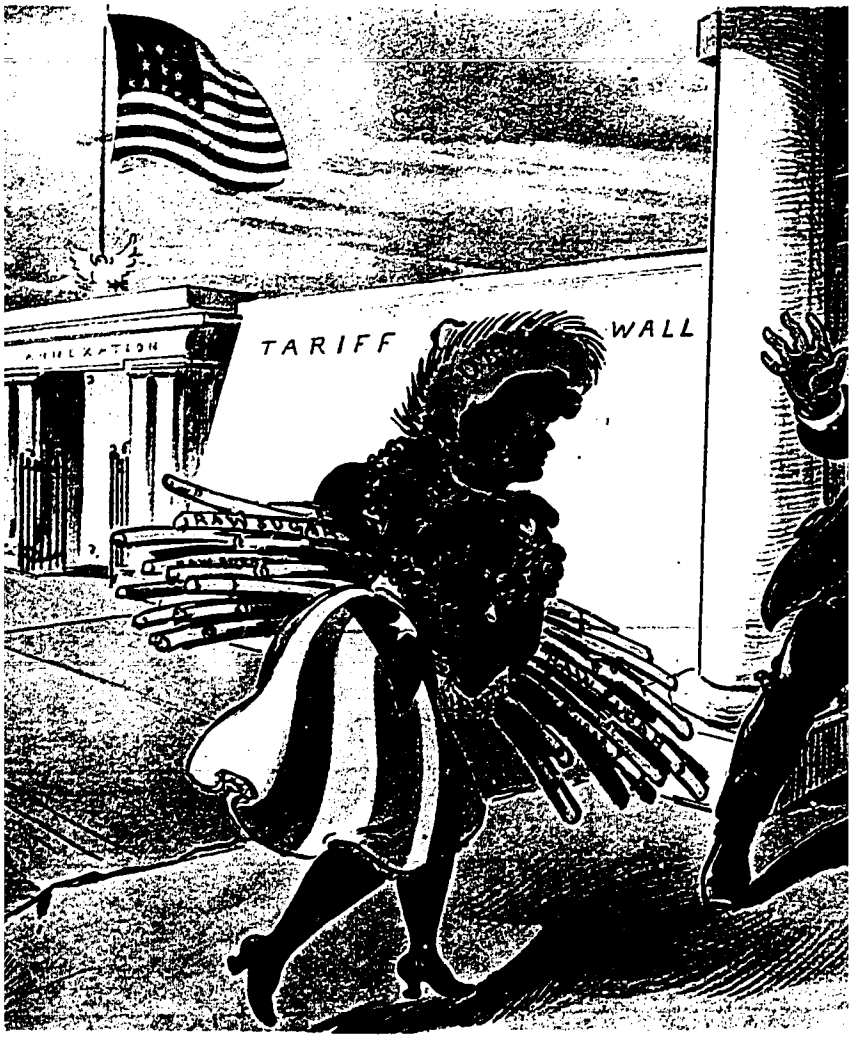
Disturbed by reports of filth in meatpacking plants, it passed pure food and drug laws. Shocked by stories of the "white slave trade," it passed the Mann Act. The Supreme Court upheld these laws, and others.

But when President Woodrow Wilson nominated Brandeis for Associate Justice in January, 1916, the *New York Times* thought the Court no place for "a striver after changes." William Howard Taft and Joseph H. Choate called him "not a fit person" for the bench. The Senate wrangled for almost five months before confirming him.

Of all challenges to reform, child labor was the most poignant: "a subject for the combined intelligence and massed morality of American people to handle," said Senator Beveridge. In 1916 Congress passed a law to keep goods made by child labor out of interstate commerce.

As a result, John Dagenhart, less than 14, would lose his job in a textile mill in Charlotte, North Carolina. His brother, Reuben, not yet 16, would lose 12 hours of piecework a week.

Their father asked the federal district court to enjoin the factory from obeying the law and United States Attorney William C. Hammer from enforcing it. As "a man of small means," with a large family, he com-



plained, he needed the boys' pay for their "comfortable support and maintenance." Their work was "altogether in the production of manufactured goods" and had "nothing whatsoever" to do with commerce.

When the district judge granted the injunctions, the U.S. attorney appealed to the Supreme Court. Five Justices thought that in enacting the Child Labor Law Congress had usurped the powers of the states; such laws might destroy the federal system.

Legislation can begin where an evil begins, retorted Justice Holmes, dissenting. If Congress chooses to prohibit trade in "the product of ruined lives," the Court should not outlaw its choice. He added: "I should have thought that if we were to introduce our own moral conceptions where in my opinion they do not belong, this was preëminently a case f
cise of all its powers

Three Justices joir
So did Congress; it p
on products of child
Court decided that th
alty, not a tax, and he
tice William Howard
saying the Tenth Ame
lems like child labor

Not until 1941 did
child labor decisions
ers urged an amendm
and called the Court
ture." They pointed
member of the Supre
the collective power
tives and ninety-six
100,000,000 people."


GOULD
HILL
PUBLIC SERVICE

Two months after Congress declared war on Germany in April, 1917, it passed an Espionage Act that punished attempts to obstruct enlistment and discipline in the armed forces. In 1918 it passed a Sedition Act so broadly worded that almost any critical comment on the war or the government might incur a fine of $10,000, or 20 years in prison, or both.

Under the 1917 law, government attorneys filed almost 2,000 prosecutions, among them *United States* v. *"The Spirit of '76."* Only a handful of these cases reached the Supreme Court. Only after the Armistice did the Justices hear a case challenging the l. w by the First Amendment guarantee of free speech.

Charles T. Schenck and other members of the Socialist Party in Philadelphia were convicted of conspiring to mail circulars to drafted men. In forbidding slavery, these leaflets said, the Thirteenth Amendment forbade the draft.

For a unanimous Court, Holmes wrote that "in many places and in ordinary times" the Socialists would be within their constitutional rights. But the Bill of Rights does not protect words creating a "clear and present danger" of "evils that Congress has a right to prevent." Schenck was sentenced to six months in jail.

But Holmes and Brandeis dissented when the 1918 Sedition Act, and leaflets in English and Yiddish, came before them. Flung from a factory window to the New York streets on August 23, 1918, these papers summoned "the workers of the world" to defend the Russian Revolution against despots. "P. S.," said some, "We hate and despise German militarism more than do your hypocritical tyrants." In the district court one defendant was acquitted; the rest went to prison.

Reviewing law and the leaflets, Holmes remarked, "Congress certainly cannot forbid all effort to change the mind of the country." He saw no national danger in the "usual tall talk" of "these poor and puny anonymities." But he saw danger in persecution of opinions, for "time has upset many fighting faiths" and the national good requires "free trade in ideas." To reach the truth, people must weigh many opinions.

"That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment," Justice Holmes concluded.

"TRUST-BUSTER" *Theodore Roosevelt defies the goliaths of Wall Street. James J. Hill and J. P. Morgan, through a stock monopoly called Northern Securities, controlled railroads in the northwestern states; President Roosevelt ordered a suit against them under the Sherman Anti-Trust Act. In 1904 the Supreme Court affirmed a lower court's judgment breaking up the monopoly. This decision (Northern Securities* v. *U. S.) was a victory for the public interest over the power of the trusts.*

FRENZIED SELLING *racks the stock market in the panic of 1901 when Morgan, Hill, and E. H. Harriman fought to a stalemate for control of railroad shares. Finally agreeing on a compromise, the three formed the Northern Securities Company.*

PUCK, LIBRARY OF CONGRESS (LEFT) AND ADAPTATION FROM HARPER'S WEEKLY

ONE OF THE GREAT DISSENTERS, *John Marshall Harlan won fame as a defender of democracy during 33 years as an Associate Justice, serving from 1877 to 1911.*

He protested sharply in the Standard Oil case, when the Court said that no companies may "unreasonably" restrain trade. The Sherman Act forbids "every" trust or combination in restraint of interstate commerce; Harlan thundered, "The Court has now read into the Act of Congress words which are not to be found there."

Onetime Kentucky slaveowner, Harlan fought for the Union in the Civil War. Appointed to the Supreme Court by President Rutherford B. Hayes, he carried on an ardent battle for civil rights.

Dissenting in ***Plessy*** *v.* ***Ferguson,*** *he wrote: "... in view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens.... The humblest is the peer of the most powerful."*

Good-humored and convivial, he limited his disagreements to the conference room, and enjoyed whist parties with fellow Justices. Oliver Wendell Holmes called him "the last of the tobacco-spittin' judges." A friend said that Harlan retired at night "with one hand on the Constitution and the other on the Bible."

THE OCTOPUS: *Standard Oil, first of the great American trusts, came to symbolize wealth and power running wild, crushing*

"Any agitator who read these thirty-four pages to a mob would not stir them to violence, except possibly against himself," decided one reader of Benjamin Gitlow's "Left Wing Manifesto." But when that pamphlet appeared in 1919, New York authorities arrested Gitlow under the state's criminal anarchy law.

Gitlow applied to the Supreme Court. Seven Justices upheld his conviction and the New York statute. But they assumed—for the first time—that freedom of speech and of the press, which the First Amendment protects from any Act of Congress, are among the rights which the Fourteenth

met in the Hoop Spur church to plan ways of getting help from a lawyer. Armed white men attacked them; in the fight that followed, one white man was killed.

News and rumors spread; armed posses hurried to Elaine. Blacks were hunted down and shot, even women working cotton in the fields. On October 1, Clinton Lee, a white man, was killed; Moore, Hicks, Knox, Coleman, and Hall were arrested for murder.

The Governor asked the Army to restore order, and named a Committee of Seven to investigate the riots. When a lynch mob surrounded the jail, soldiers stood guard while the committee promised that the law would execute the five murderers. The mob waited to see what would happen.

Two white men and several blacks swore later that the committee tortured blacks until they agreed to testify against the prisoners. Indicted by a white grand jury for first-degree murder, the defendants faced a white trial jury on November 3; a threatening crowd filled the courthouse and the streets outside. In 45 minutes the trial was over; in two or three minutes the jury gave its verdict: "Guilty."

From the affidavits presented to the Court, Holmes concluded, "if any prisoner by any chance had been acquitted by a jury he could not have escaped the mob."

All appeals in the state courts had failed.

Normally, federal courts will not interfere with the courts of any state on matters of state law. But, warned Holmes, if "the whole proceeding is a mask"—if "an irresistible wave of public passion" sweeps the prisoners through the courts "to the fatal end"—then nothing can prevent the Supreme Court "from securing to the petitioners their constitutional rights."

The district judge should have examined the facts for himself, Holmes ruled, to see if the story in Moore's petition was true and if the state had not given its prisoners a fair trial. *Moore* v. *Dempsey* went back for the district judge to hear.

Eventually, all five defendants went free; so did nearly a hundred other blacks arrested during the riots. Federal judges had a new precedent, citizens a new safeguard. Justice may wear a blindfold, ruled the Supreme Court, but not a mask.

"THE NEW HA
reports for he
this cartoon—
"national evil
1900's. Worke
in the warm, v
spinning room

Because state law provided a death penalty, it required the court to appoint one or two defense lawyers. At the arraignment, the judge told all seven members of the county bar to serve. Six made excuses.

In three trials, completed in three days, jurors found eight defendants guilty; they could not agree on Roy Wright, one of the youngest. The eight were sentenced to death.

Of these nine, the oldest might have reached 21; one was crippled, one nearly blind; each signed his name by "X"—"his mark." All swore they were innocent.

On appeal, Alabama's highest court ordered a new hearing for little Eugene Williams; but it upheld the other proceedings.

When a petition in the name of Ozie Powell reached the Supreme Court, seven Justices agreed that no lawyer had helped the defendants at the trials. Justice George Sutherland wrote the Court's opinion. Facing a possible death sentence, unable to hire a lawyer, too young or ignorant or dull to defend himself—such a defendant has a constitutional right to counsel, and his counsel must fight for him, Sutherland said.

Sent back for retrial, the cases went on. *Norris* v. *Alabama* reached the Supreme Court in 1935; Chief Justice Hughes ruled that because qualified Negroes did not serve on jury duty in those counties, the trials had been unconstitutional.

"We still have the right to secede!" retorted one southern official. Again the prisoners stood trial. Finally Alabama dropped rape charges against some; others were paroled; one escaped.

The Supreme Court's rulings stood —if a defendant lacks a lawyer and a fairly chosen jury, the Constitution can help him.

And the Constitution forbids any state's prosecuting attorneys to use evidence they know is false; the Court announced this in 1935, when

FILM EPIC *or espionage? The case of* The Spirit of '76 *arose like almost 2,000 others when the 1917 Espionage Act endangered freedom of speech during the feverish days of World War I. Poster at right announces the premiere of* '76 *in Los Angeles. The 12-reel photoplay portrayed events of the American Revolution—clashes between patriots and English and signing of the Declaration of Independence.*

*Federal prosecutors charged that the film's producer, Robert Goldstein, a suspected German sympathizer, tried to arouse hatred between America and her World War I ally, England, by inserting scenes showing British soldiers committing atrocities in the Revolutionary War. Officials seized the film and Goldstein was convicted (***United States v. "The Spirit of '76"***).*

Under a new law, the 1918 Sedition Act, similar cases in the lower courts further threatened freedom of speech. Only after the Armistice did the Supreme Court review a scant number of these cases; Goldstein's was not among them. His movie script survives in the Library of Congress, but the film is lost. Weeks of intensive search uncovered these rare photographs made during the filming and owned by Charles E. Toberman, a Los Angeles resident, who invested money in the 1917 extravaganza.

COURTESY CHARLES E. TOBERMAN

LOS ANGELES TIMES

Tom Mooney had spent nearly 20 years behind the bars of a California prison.

To rally support for a stronger Army and Navy, San Franciscans organized a huge parade for "Preparedness Day," July 22, 1916. As the marchers set out, a bomb exploded; 10 victims died, 40 were injured. Mooney, known as a friend of anarchists and a labor radical, was convicted of first-degree murder; soon it appeared that the chief witness against him had lied under oath. President Wilson persuaded the Governor of California to commute the death sentence to life imprisonment. For years labor called Mooney a martyr to injustice.

Finally Mooney's lawyers applied to the Supreme Court for a writ of habeas corpus, and won a new ruling—if a state uses perjured witnesses, knowing that they lie, it violates the Fourteenth Amendment's guarantee of due process of law; it must provide ways to set aside such tainted convictions. The case went back to the state. In 1939 Governor Culbert Olson granted Mooney a pardon; free, he was almost forgotten.

"JUSTICE DELAYED is justice denied"—the Supreme Court saw this in 1887, when it was almost four years behind in its work. Appealing to the public, Chief Justice Waite sought "relief for the people against the tedious and oppressive delays" of federal justice. In 1891 Congress passed a law that gave each circuit a court of appeals with power to make a final decision in a great many cases. This law also ended the Justices' trips on circuit duty. Before long the Supreme Court was keeping up with its schedules. But as new laws regulated business and working conditions, and suits challenging these laws reached the courts, overloaded dockets plagued the Justices again.

After Fuller's death in July, 1910, President Taft broke tradition by naming an Associate Justice, Edward Douglass White, for Chief.

When White died in 1921, President Harding made Taft Chief Justice, the only former Chief Executive ever to hold the highest judicial office. Taft was vastly delighted, for the Chief Justiceship, not the Presidency, had always been the honor he wanted most.

Considering the clogged machinery of the federal courts, where the caseload was rising again, Taft remarked: "A rich man can stand the delay . . . but the poor man always suffers." The new Chief Justice set out to improve the whole federal judiciary.

He planned the Conference of Senior Circuit Court Judges, a source of many reforms in judicial practice. The law establishing the conference permitted judges of one area to help elsewhere on courts swamped with work. Then Taft broke tradition to lobby for the "Judges' Bill," passed in 1925.

By limiting the right of appeal, this law let the Supreme Court devote its attention to constitutional issues and important questions of federal law. In most cases since 1925, the parties ask permission to be heard; the Justices grant or deny it at discretion.

Before gaining freedom to choose cases, the Court astonished the country in 1923 by a choice of precedents to decide *Adkins* v. *Children's Hospital*. In the majority opinion, Justice Sutherland returned to the "meddlesome interferences" doctrine of *Lochner* v. *New York*, the bakery case of 1905.

Congress had passed a law to guarantee minimum wages for women and children

working in the District of Columbia. A children's hospital attacked the law; the case reached the Supreme Court. Five Justices agreed that the law violated the due process clause of the Fifth Amendment and the right to liberty of contract. Sutherland hinted that since women had won the right to vote they were legally equal to men, so Congress should not single them out for special protection.

"It will need more than the Nineteenth Amendment to convince me that there are no differences between men and women," Holmes retorted, dissenting, "or that legislation cannot take those differences into account." On the "dogma" of liberty of contract, he remarked: "pretty much all law consists in forbidding men to do some things that they want to do, and contract is no more exempt from law than other acts."

Taft also dissented. He had always supposed, he said, that *Lochner* had been overruled by later decisions; and, he added, poor workers cannot meet an employer on an equal level of choice.

But Arizona, Arkansas, and New York saw their minimum-wage laws go down under the *Adkins* precedent.

Justice Sutherland always believed that judges were the best guardians of liberty. Chosen for learning, ability, and impartiality, judges were safer guides than any other men. Courts were wiser than crowds.

"I am an optimist in all things," Sutherland said once. He felt sure that evolution's universal laws were making the world better, that meddlesome legislation could only bring trouble. Often he spoke for the famous "four horsemen"—himself, Pierce Butler, James C. McReynolds, and Willis Van Devanter. With them and one other Justice, Sutherland could say what laws were valid.

By 1930 Harvard Professor Felix Frankfurter took stock: "Since 1920 the Court has invalidated more legislation than in fifty years preceding." When Taft retired that year, President Hoover wanted Charles Evans Hughes for Chief Justice. Debating the appointment, one Senator accused the Justices of "fixing policies for the people . . . when they should leave that to Congress," another called the Court "the economic dictator in the United States." But the Senate

NEW YORK PUBLIC LIBRARY


The Revolutionary Age

Devoted to the International Communist Struggle

In This Issue:
Left Wing Convention,
Manifesto and Program

"Nothing Doing"

COMMUNIST CANDIDATES, ***William Z. Foster (left) and his running mate Benjamin Gitlow lost miserably in the 1928 Presidential race. In 1925 the Supreme Court had upheld a New York conviction of Gitlow for publishing the "Left Wing Manifesto." This ponderous article, calling workers to rise against capitalism, appeared in*** **The Revolutionary Age** ***(above).***

UNITED PRESS INTERNATIONAL

78

confirmed Hughes for Chief, and Owen J. Roberts for Associate a few months later.

Nicknamed the "roving Justices," Hughes and Roberts sometimes joined the "four horsemen," sometimes joined three Judges more willing to accept laws however meddlesome. These three were Brandeis, Harlan Fiske Stone, and Holmes until he retired in 1932. Benjamin N. Cardozo succeeded him, and often voted with Brandeis and Stone.

WHEN THE STOCK MARKET collapsed in 1929 and the American economy headed toward ruin, President Hoover called for emergency measures. The states tried to cope with the general disaster. Before long, cases on their new laws began to reach the Supreme Court. Franklin D. Roosevelt won the 1932 Presidential election, and by June, 1933, Congress had passed 15 major laws for national remedies.

Almost 20,000,000 people depended on federal relief by 1934, when the Supreme Court decided the case of Leo Nebbia. New York's milk-control board had fixed the lawful price of milk at nine cents a quart; the state had convicted Nebbia, a Rochester grocer, of selling two quarts and a five-cent loaf of bread for only 18 cents. Nebbia had appealed. Justice Roberts wrote the majority opinion, upholding the New York law; he went beyond the 1887 decision in the Granger cases to declare that a state may regulate any business whatever when the public good requires it. The "four horsemen" dissented; but Roosevelt's New Dealers began to hope their economic program might win the Supreme Court's approval after all.

They were wrong. Considering a New Deal law for the first time, in January, 1935, the Court held that one part of the National Industrial Recovery Act gave the President too much lawmaking power.

The Court did sustain the policy of reducing the dollar's value in gold. But a five-to-four decision in May made a railroad pen-

U. S. ARMY TROOPS *guard Negroes rounded up near Elaine, Arkansas, after racial violence broke out in the autumn of 1919. Black sharecroppers had felt white landlords were cheating them. Local authorities feared subsequent riots were the beginning of a mass-murder plot.*

sion law unconstitutional. Then all nine Justices vetoed a law to relieve farm debtors, and killed the National Recovery Administration; F.D.R. denounced their "horse-and-buggy" definition of interstate commerce.

While the Court moved into its splendid new building, criticism of its decisions grew sharper and angrier. The whole federal judiciary came under attack as district courts issued—over a two-year period—some 1,600 injunctions to keep Acts of Congress from being enforced. But the Court seemed to ignore the clamor.

Farming lay outside Congressional power, said six Justices in 1936; they called the Agricultural Adjustment Act invalid for dealing with state problems. Brandeis and Cardozo joined Stone in a scathing dissent: "Courts are not the only agency . . . that must be assumed to have capacity to govern." But two decisions that followed denied power to both the federal and the state governments.

In a law to strengthen the chaotic soft-coal industry and help the almost starving miners, Congress had

SCENE OF VIOLENCE: *Black sharecroppers air grievances in Hoop Spur church near Elaine. White men park nearby. Suddenly gunfire explodes into the "Elaine Massacre." Frank Moore and other blacks were sentenced to die for murder. The Supreme Court considered their claim that mob domination barred fair trial, and returned the case to a federal court for investigation (Moore v. Dempsey). Eventually, all defendants went free.*

dealt with prices in one section, with working conditions and wages in another. If the courts held one section invalid, the other might survive. When a test case came up, seven coal-mining states urged the Court to uphold the Act, but five Justices called the whole law unconstitutional for trying to cure "local evils"—state problems.

Then they threw out a New York law that set minimum wages for women and children; they said states could not regulate matters of individual liberty.

By forbidding Congress and the states to act, Stone confided bitterly to his sister, the Court had apparently "tied Uncle Sam up in a hard knot."

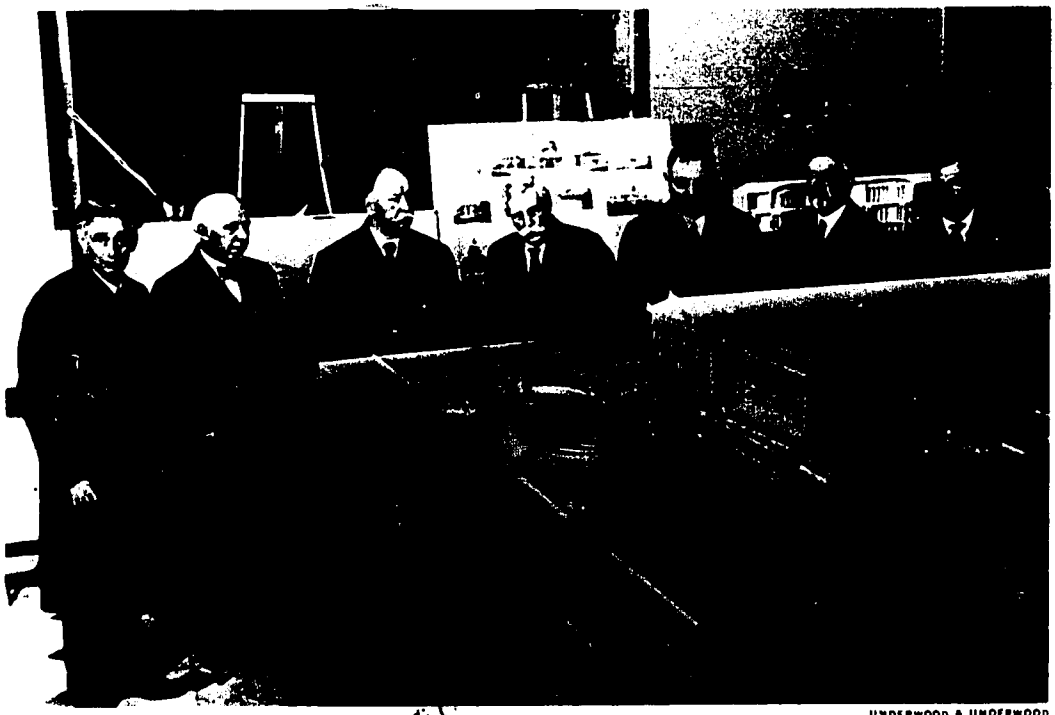
That November Roosevelt won reelection by a margin of ten million votes; Democrats won more than three-fourths of the seats in Congress. The people had spoken. Yet the laws their representatives passed might stand or fall by five or six votes in the Supreme Court. Roosevelt, aware that Congress had changed the number of Justices six times since 1789, sent a plan for court reform to the Senate on February 5, 1937.

Emphasizing the limited vision of "older men," Roosevelt asked Congress for power to name an additional Justice when one aged 70 did not resign, until the Court should have 15 members. (Six were already over 70; Brandeis was 80.) Roosevelt said the Court needed help to keep up with its work.

Even staunch New Dealers boggled at this plan; it incurred criticism as sharp as any the Court had ever provoked. Chief Justice Hughes calmly pointed out that the Court was keeping up with its work. And in angry editorials and thousands of letters to Congress the public protested the very idea of "packing" the Court.

Before the President revealed his plan, five Justices had already voted to sustain a state minimum-wage law in a case from Washington; on March 29, the Court announced that the law was constitutional.

On April 12, Chief Justice Hughes read the majority opinion in *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*. It upheld the Wagner Act, the first federal law to regulate disputes between capital and labor. Hughes gave interstate commerce a definition broader than the Jones & Laughlin domain—mines in Minnesota, quarries in West Virginia, steamships on the Great Lakes. Although the case



UNDERWOOD & UNDERWOOD

turned on a union dispute at one plant in Pennsylvania, he said, a company-wide dispute would paralyze interstate commerce. Congress could prevent such evils and protect union rights.

Under these two rulings, Congress and the states were free to exercise powers the Court had denied just a year before. Stubbornly the "four horsemen" dissented. But Van Devanter announced that he would retire. By autumn the fight over the Court was a thing of the past.

As Lincoln said in 1861, the people would rule themselves; they would decide vital questions of national policy. But, as firmly as Lincoln himself, they disclaimed "any assault upon the Court." In one of the Supreme Court's greatest crises, the people chose to sustain its power and dignity.

DECISIONS CHANGED dramatically in the "constitutional revolution" of 1937. So did the Court when President Roosevelt made appointments at last.

In 1937 he named Senator Hugo L. Black; in 1938, Solicitor General Stanley Reed; in 1939, Felix Frankfurter and William O. Douglas, Chairman of the Securities and Exchange Commission. Attorney General Frank Murphy came to the bench in 1940; Senator James F. Byrnes of South Carolina, in 1941.

When Hughes retired that year, Roosevelt made Stone Chief Justice and gave his seat as Associate to Attorney General Robert H. Jackson. How the "new Court" would meet old problems soon became clear.

Congress passed the Fair Labor Standards Act in 1938. It banned child labor, regulated hours, and set minimum wages—25 cents an hour—in interstate commerce. *United States* v. *Darby Lumber Co.* brought the law before the Court in 1941.

If the Justices followed the child-labor decisions of 1918 and 1922, they would veto the law; but all nine called it valid.

But new problems tested the Court as it was defining civil liberties. Danger from abroad made the case for patriotism and freedom in America more urgent: in the "blood purge" of 1934, Adolf Hitler had announced, "I became the supreme judge of the German people."

Under God's law, the Commandments in the Book of Exodus, members of Jehovah's Witnesses refuse to salute a flag.

JUDICIAL ARCHITECT, *William Howard Taft, tenth Chief Justice, streamlined the Nation's system of legal review. At his persuasion, Congress passed the "Judges' Bill" in 1925. This stripped the Supreme Court of routine cases, leaving Justices free to hear only suits that involved major constitutional questions and problems of federal law.*

He won another victory when Congress provided funds for the first Supreme Court Building. With the Justices in 1929 (left), Taft studies architect Cass Gilbert's model. When the cornerstone was laid in 1932, Chief Justice Charles Evans Hughes said of Taft, who had died two years before: "This building is the result of his intelligent persistence."

Taft realized a lifelong ambition when President Harding appointed him Chief Justice in 1921. Taft later wrote, "... the court ... next to my wife and children, is the nearest thing to my heart in life." Before becoming Chief Justice, he served as the twenty-seventh President—the only man to hold both offices.

UNITED PRESS INTERNATIONAL (ABOVE AND BELOW)

BEWILDERED BLACK YOUTHS *walk under guard of state militia toward the Jackson County courthouse at Scottsboro, Alabama. Charged with assaulting two white women, the defendants stood their first trial in 1931 when 19-year-old Ruby Bates (left, on witness stand) said the Negroes had attacked her and a friend. At a later trial in 1933 she swore that her original story was a lie, but her repentant testimony failed to convince the jury. She later led a demonstration to the White House in an appeal for the freedom of the nine Negroes.*

WIDE WORLD (ABOVE), BROWN BROTHERS (RIGHT)

When Lillian and William Gobitas (misspelled "Gobitis" in the record), aged 12 and 10 in 1935, refused to join classmates in saluting the Stars and Stripes, the Board of Education in Minersville, Pennsylvania, decided to expel them for "insubordination." With help from other Witnesses and the American Civil Liberties Union, their father sought relief in the federal courts. The district court and the circuit court of appeals granted it. In 1940 the school board turned to the Supreme Court.

Considering the right of local authorities to settle local problems, eight Justices voted to uphold the school board's "secular regulation." Justice Frankfurter wrote the majority opinion. He told Jehovah's Witnesses that his private idea "of liberty and toleration and good sense" favored the Gobitas family, but he believed that judges should defer to the actions of the people's elected representatives.

Hitler's armies had stabbed into France when Frankfurter announced the Court's ruling on June 3, 1940; Stone read his dissent with obvious emotion, insisting that the Constitution must preserve "freedom of mind and spirit."

Law reviews criticized the Court for setting aside the issue of religious freedom. Jehovah's Witnesses suffered violent attacks around the country; many states expelled children from school for not saluting the flag.

SCOTTSBORO BOYS *confer with lawyer Sam Leibowitz, who later became a famous New York judge. His masterly defense focused world attention on the Alabama trials where eight of the defendants were convicted and sentenced to death in the electric chair. The spotlight of the Scottsboro cases fell on Haywood Patterson (seated). When Leibowitz and his co-counsel showed that qualified Negroes had been barred from jury duty, and claimed that the youths had been denied a fair trial, the Supreme Court reversed their convictions. Alabama tried them again. In a Alabama courtroom with Leibowitz (opposite), Patterson holds a horseshoe for good luck. It failed him. He was four times tried and convicted of attacking two white girls. In 948 he escaped prison and was never recaptured.*

West Virginia law required all schools to teach "Americanism," and in 1942 the State Board of Education ordered all teachers and pupils to salute the flag. A child who refused might be punished as a "delinquent," his parents might be fined or jailed.

Walter Barnette and other Witnesses with school-age children sued for a federal injunction against these penalties; in 1943 the Supreme Court heard the case argued.

On Flag Day, June 14, the Court flatly overruled and repudiated the *Gobitis* decision. For the majority, Justice Jackson rejected the idea that a child's forced salute would foster national unity. He singled out as a "fixed star in our constitutional constellation" this fact—"no official, high or petty," can prescribe orthodoxy in politics, nationalism, or religion, for any citizen.

Justice Frankfurter still upheld the state's action against his own "purely personal" view, saying: "One who belongs to the most vilified and persecuted minority in history is not likely to be insensible to the freedoms guaranteed by our Constitution."

AGITATOR AND MARTYR *for labor, Tom Mooney, leaves San Quentin in 1939. Charged with murder for deaths in a 1916 Preparedness Day bombing, he escaped the gallows when facts indicated he had been convicted on perjured testimony. In 1918 the Governor of California commuted his sentence to life in prison; 20 years later, he was pardoned.*

WIDE WORLD

"In this solemn hour we pledge our fullest cooperation to you, Mr. President, and to our country," said a telegram to President Roosevelt, December 7, 1941, from the Japanese American Citizens League, at news of the Japanese attack on Pearl Harbor.

By the spring of 1942 such citizens were a vilified minority in their own country. In February the President signed Executive Order 9066, authorizing the War Department to remove "any and all persons" from military areas it might name; Congress approved in a law passed March 21. The Western Defense Command ordered everyone of Japanese ancestry to stay indoors from 8 p.m. to 6 a.m. In May the Army ordered such persons to report for evacuation to "relocation centers"—detention camps.

Gordon K. Hirabayashi, a senior at the University of Washington, thought it was his duty as a citizen to disobey both these orders, to defend his constitutional rights. Convicted and sentenced to three months in prison, he applied to the Supreme Court.

Chief Justice Stone spoke for all nine in June, 1943: the curfew was within the war power of the President and Congress. Concurring, Douglas wrote that the Court did not consider the wisdom of the order; Murphy insisted that the government could take such measures only in "great emergency."

In *Korematsu* v. *United States*, argued in October and decided on December 18, 1944, the Court upheld an Army order banishing civilians of Japanese ancestry from the west coast—adults, foster children in white homes, citizens "with as little as one-sixteenth Japanese blood." Justice Black wrote the majority opinion, mentioning Toyosaburo Korematsu's unquestioned loyalty. Orders affecting one racial group are "immediately suspect," said Black, but the Court would accept the order "as of the time it was made," under the war power.

Three Justices dissented, calling the order "a clear violation of Constitutional rights," "utterly revolting among a free people."

That same day, the Court unanimously ordered the Central Utah Relocation Center to release Miss Mitsuye Endo. The War Relocation Authority had conceded she was a loyal, law-abiding citizen, but it had not allowed her to leave the center freely.

MBING: *During Preparedne*
ell when a bomb exploded ju
t on the parapet at right, ma
rtheless, he applied to the S
'onstitution forbids use in st

's opinion warned that
e community is not pow-
worthy citizens. Federal
writs of habeas corpus in
. "Loyalty is a matter of
g," added Douglas, "not
color."

for Richard
en other prisoners, Col.
of Cassius M.
nal to obey one order of
in-Chief they had to defy
iens, all German-born,
ric but returned bef
udy sabotage techniques
erlin.

ht fog on June 12, 1942,
ine edged toward Amag
ag Island, to land Quirin
es, in German uniform.
On the beach they met an
ardsman who pretended
tory about fishing, then
p. Armed, his patrol hur-
U-boat diesels offshore.
NT and bombs disguised
as pen-and-pencil se
and the Federal Bu

Five nights later,
Thiel, Edward Kerli
bauer landed safely
Florida, from anothe
saboteurs damaged
the FBI announced

President Roosev
commission to try t
Articles of War, an
Dowell to defend the
mation closing all
enemies, but the defe
their clients, to disc
the commission's lega
writ of habeas corp

After two days of
ing lawyers for both
that Congress, in th
provided for commis
that the President
one; that the writs

The President an
that all the saboteu
six executed. Two
with the FBI went

STILL SMILING *31 ye[ar]s, Leo Nebbia, former grocer of Roc[hester] New York, holds two bottles of mi[lk] by 1965 had more than t[r]pled in co[st] he sold it for nine cents a quart during the Great Depression. He sought review in the Supreme Court after being convicted of breaking a state minimum-price law passed to protect the New York milk industry in the face of damaging price wars. Precedents from the 1920's suggested that the Court would strike down the law.*

*But in 1934 five Justices voted to sustain it as a reasonable measure to promote the public welfare (**Nebbia v. New York**). Nebbia paid a five-dollar fine.*

The picture at right appeared in a newspaper reporting the outcome of his case. For the picture taken for this book, Nebbia —in 1965 a realtor in Las Vegas— made a special journey to Rochester. He died in June, 1974. Today his son, Vincent, owns the store, four times as large but still at the same location.

In its publish[ed] opinion the Supreme Court discussed precedents from 1780 to recent years. And it set another precedent —no proclamation from the White House would close the doors of the Court. An executive order would not annul its power to review government actions under law.

Bridges and aluminum plants survived the saboteurs' visit unharmed; a friend and a father did not. From Werner Thiel's days in New York, watched by the FBI, came *Cramer* v. *United States*. For the first time the Supreme Court reviewed a conviction for treason; a five-to-four vote decided that the conviction could not stand.

Justice Jackson, for the majority, explained why. The Constitution outlines the law of a most intricate crime in two sentences "packed with controversy and difficulty," he said. Treason against the United States lies "only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort." Unless a person confesses "in open Court" or two witnesses testify "to the same overt Act" of treason, he cannot be found guilty.

The jury that convicted Anthony Cramer,

a natur
Thiel a
States."
nesses
"long a
what th
The
gave th
paid for
and Cra
less del
public"
Cramer
Acts
treason
for the
Anot
Hans
stood tr
of the s
Witness
son for
he had
him try
lenses f
these ac
Haupt


MEMBER
U.S.

PHILADELPHIA INQUIRER

UNFURLED "BLUE EAGLE," *symbol of the National Recovery Administration (NRA), rises above a delegation (left) headed by New York City's Mayor Fiorello H. La Guardia, in center foreground. President Franklin D. Roosevelt set up the NRA in 1933 under one of the most sweeping laws ever passed by Congress to regulate commerce among the states.*

As an emergency measure, the NRA attempted, through federal control, to promote the recovery of the Nation's industry, create work for the mass of Great Depression jobless, and provide purchasing power to drain the surplus of food and manufactured goods piled up in warehouses throughout the country.

"What hit me?" wonders the New Deal (right), caught by a whirlwind decision of the Supreme Court.

VICTORIOUS BROTHERS, *Aaron (left) and Alex Schechter, shoulder lawyer Joseph Heller who won their celebrated suit—the "Sick Chicken Case," a deathblow to the NRA. The government had indicted the brothers, poultry dealers in Brooklyn, New York, for breaking the NRA's "Live Poultry Code" that fostered fair competition. In turn the brothers had claimed that the NRA was unlawful, because Congress had improperly delegated too much legislative power to the President. In 1935 on a day New Dealers called "Black Monday," the Court killed the NRA (Schechter Poultry Corp. v. U.S.) and ruled against the Administration in two other important cases. In decisions that followed, the Court continued to strike down Roosevelt's major New Deal legislation*

LINGERING REMNANT OF NRA: *A "Blue Eagle" poster (below) peels away at the hand of an employee in the Commerce Department, Washington, D.C. Until the Court outlawed the NRA, industries that had voluntarily tried to improve the economy by regulation of production and prices had displayed the "Eagle."*

UNITED PRESS INTERNATIONAL

FIRESIDE CHAT: *President Roosevelt defends his reorganization plan for the Supreme Court during an informal radio broadcast on March 9, 1937. In this retaliation to the Court's hostility toward his New Deal reform measures, Roosevelt labeled the Court a "third House of the Congress —a super legislature."*

He urged listeners to "save the Constitution from the Court and the Court from itself." His proposal, called "Court-packing" by the public, advocated more Judges, who would bring a "steady and continuing stream of new and younger blood" to the Court.

DNAL

n service. Black warned—if he
und power for Congress to say so.
rt did not. To provide for justice in
es, said Black. Congress could give
on to civilian courts by law.

Air Force base in Oxfordshire,
a sergeant's wife was saying she
d her husband the night before.
ons, thought the Air Force psy-
he knew how she had grown up
l in a poor and broken home, how
and squandered money and drank.
ent men to investigate: they found
and's body.

psychiatric and prenatal care, she
a hospital until a court-martial
l her of premeditated murder and
l her to life at hard labor. Flown
merica in 1953, she bore her third
federal prison for women.

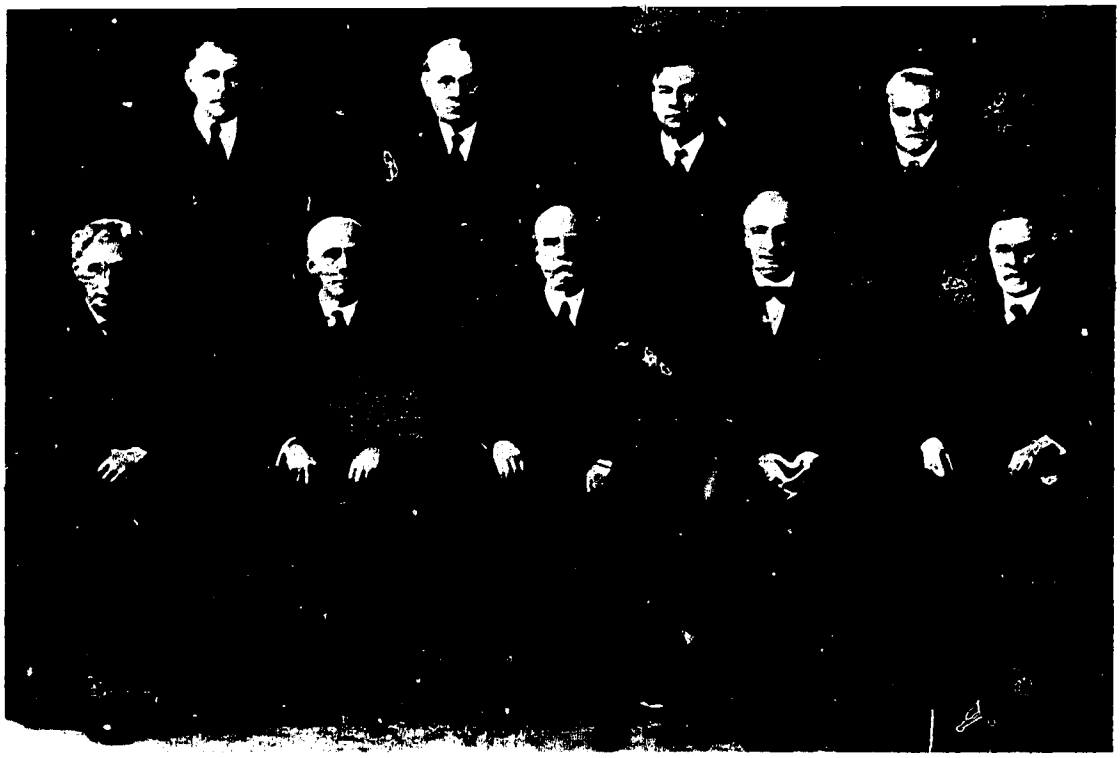
ourt of Military Appeals ordered a
: in 1955 doctors found her sane:
Supreme Court agreed to hear
that the Uniform Code of Mili-
ce denied her constitutional rights
trial under the Sixth Amendment.
case they took another that raised
legal issues.

g under pressure as the term was
he Court reached these cases and
d the validity of military trials for
ependents abroad. Warren, Black,

CARTOONS PRO AND CON *appeared in newspapers when President Franklin D. Roosevelt tried to add six Justices who would favor his policies. From 1935 until 1937, the Supreme Court pictured below negated New Deal attempts to lift a depressed economy.*

COURTESY JERRY DOYLE

"NINE OLD MEN" OF 1937: *From left are (standing) Owen J. Roberts, Pierce Butler, Harlan Fiske Stone, Benjamin N. Cardozo; (seated) Louis D. Brandeis, Willis J. Van Devanter, Chief Justice Charles Evans Hughes, James C. McReynolds, George Sutherland.*



HARRIS AND EWING

STEEL LABOR

THE VOICE OF THE STEEL WORKERS ORGANIZING COMMITTEE – C.I.O.

MAY 15, 1937 — Price Two Cents — VOL. II, No. 9

25,000 J & L MEN STRIKE FOR SIGNED CONTRACT

STEEL MILLS TELLSWOCTO CALL STRIKE

Youngstown Sheet & Tube and Republic Workers Demand Contracts

AN ACT OF BAD FAITH

A Statement to the Public on the Steel Crisis, by Philip Murray, Chairman of the Steel Workers Organizing Committee

THERE is a crisis developing on certain "fronts" of the steel industry, as regards management's relations with its workmen, which is of vital interest to the general public. I want the public to know that responsibility for any strike that might take place rests solely with those so-called "big independents" who refuse to give their own workmen the protection they want through a written contract.

To those who might not have been following closely the present economic struggle of the Steel Workers Organizing Committee, I should like to recall briefly...

MURRAY CALLS 'WAR' BOARD OF OTHER PLANTS

Jones & Laughlin Refusal to Sign Contract Is Cause of Walkout

Pittsburgh, Pa., May 14.—When Jones & Laughlin Steel Corporation officials refused to sign a SWOC contract [illegible] workmen in Pittsburgh and Aliquippa works of the corporation went on strike. Picket lines [illegible] around the mill [illegible]

AFTERMATH OF A COURT DECISION: *A steel strike in Pittsburgh (right) in May, 1937, followed a Supreme Court case involving Jones & Laughlin Steel Corporation. Its plant in Aliquippa had fired 12 employees who supported the Steel Workers Organizing Committee, a C.I.O. union. When the Court upheld the Wagner Act, which forbids such action by management, it ordered the workers reinstated. The Court's action confirmed labor's right to vote for the union of its choice. But at first the company refused to consent to an election. Workers went on strike and won. Steelworker (below) casts ballot for union preference.*

and Douglas noted dissent: Frankfurter, a "reservation" of opinion.

Then, as it rarely does, the Court granted a petition for rehearing; in 1957 six Justices agreed to reverse the decisions. Congress could not deprive civilians of the safeguards in the Bill of Rights, Black insisted. Under the new ruling, courts-martial may not try mothers, wives, or children of servicemen for crimes carrying a death penalty.

Extending this rule in a series of cases, the Court stopped court-martial trial of dependents for lesser crimes, and of civilian employees abroad for all crimes.

MEANWHILE, in another long series of decisions, the Court was defining the constitutional rules for fair criminal trials in state courts.

Tortured and whipped by deputy sheriffs, three men confessed to murder; in 1936 the Supreme Court found that their state, Mississippi, had denied them due process of law.

JAMES CUNKLIN (LEFT) AND UNITED PRESS INTERNATIONAL

LIKE FATHER LIKE SON AND DAUGHTER, *William and Lillian Gobitas with their father, Walter, between them, believe as Jehovah's Witnesses that saluting the flag is idolatry. Their father charged that compulsory pledges of allegiance to the flag denied his children freedom of religion, a basic constitutional right. In 1940 the Court ruled against him, refusing to be "exclusive" for the country."*

On trial, Mrs. Mapp offered evidence that a boarder had left the books, some clothes, and no forwarding address. The police did not prove they had ever had any warrant. But Mrs. Mapp got a prison sentence. Ohio's highest court upheld it.

Reviewing *Mapp* v. Ohio, the Supreme Court decided in 1961 to bar the doors of every courtroom—state as well as federal—"to evidence secured by official lawlessness." The Fourth Amendment sets standards for search and seizure, said its opinion, and the Fourteenth requires judges to uphold them in every state of the Union. In closing the courtroom doors, the Justices guarded the doors of every home.

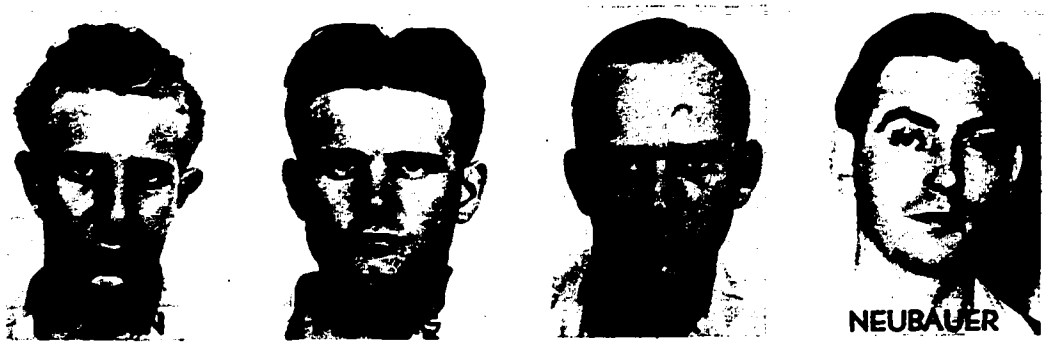
TO OPEN all public-school doors to Negro children, without discrimination, the Supreme Court gave its decision in *Brown* v. *Board of Education* on May 17, 1954. Chief Justice Warren read the unanimous opinion: "... in the field of public education the doctrine of 'separate but equal' has no place."

Inheriting this doctrine from *Plessy* v. *Ferguson*, the Court first heard full argument on its place in public education in 1938, when the Court ordered Missouri to let a black join white students at the state's only law school. By 1951 it had similarly applied the *Plessy* doctrine in three other graduate-school cases.

Oliver Brown of Topeka, Kansas, sued the city school board that year in behalf of his eight-year-old daughter

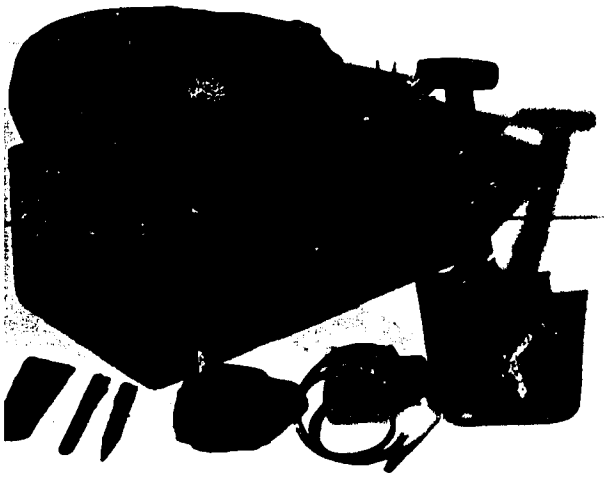
FIGHTER *for civil lib*
Gordon K. Hir
(right), teaches a cla
University of A
Canada. A college
1942, he refused t
military order that
Japanese-Amer
register for evac
relocation cen
claimed that the Ar
violated his rig
U. S. citizen. His pl
when the Supren
(Hirabayashi v. U.
that the threat of
and sabotage sanctio
military restr
constitutional right
Japanese-American

civil liberty, Dr.
K. Hirabayashi
s a class at the
ity of Alberta in
ollege senior in
fused to obey a
er that required
e-Americans to
r evacuation to
tion centers. He
the Army order
l his rights as a
His plea failed
Supreme Court
hi v. U. S.) held
reat of invasion
sanctioned the
ry restriction of
al rights among
nerican citizens.



EIGHT NAZI SABOTEURS, *foiled by FBI agents in their attempt to cripple U. S. industrial plants in 1942, faced trial by a military commission. Their lawyers, assigned by President Roosevelt, applied to the Supreme Court, claiming the commission was unlawfully appointed. But the Court upheld the commission under the powers of the President and Congress (Ex parte Quirin).*

TOOLS OF DESTRUCTION: *Nazi saboteurs, in teams of four as shown above, landed from U-boats, one team at Long Island, New York, the other south of Jacksonville, Florida. Each team brought ashore boxes of high explosives (below) that included TNT disguised as coal, incendiary pen-and-pencil sets, fuses, detonators, primers, and an assortment of mechanical and chemical timing devices. Coast Guardsmen discovered the New York team's cache buried with German uniforms in sand dunes.*



Linda Carol. She had to cross railroad yards to catch the bus for a Negro school 21 blocks away; her father wanted her in the white school only five blocks from home.

Three federal judges heard testimony on teachers, courses of study, buildings; they heard lawyers for Brown and 12 other black parents argue that the Kansas law permitting segregation violated the Fourteenth Amendment. Finding the schools substantially equal, the judges ruled against Brown; they said that *Plessy* controlled the case.

Ten-year-old Harry Briggs, Jr., and 66 other black children had filed a similar suit, through their parents, against school authorities in Clarendon County, South Carolina. The county was spending $395,000 for 2,375 white pupils, $282,000 for 6,531 black pupils. All the white students had desks; two black schools had no desks at all.

Like the other school cases, this was a suit in equity: If someone suffers a wrong and the law provides no remedy, he may ask a court of equity for relief; for centuries such courts have had power to fashion special remedies to serve the ends of justice.

The federal court that heard the *Briggs* case ordered Clarendon County to "equalize" its schools as soon as possible; but,

TWO ESCAPED EXECUTION: *Dasch and Ernest Burger lost courage and expcsed the sabotage plot to the FBI. Within 14 days of their landing all the saboteurs had been captured. The two informers were spared the electric chair—the fate of the other six. Below, Maj. Gen. Myron C. Cramer, Judge Advocate General of the War Department, holds a shovel used as evidence in the trial of the men.*

GERMAN UNIFORM CAP *crowned the military dress worn by the saboteurs when they landed. Not until they changed into civilian clothes on the beach did the raiders become liable for espionage and the death sentence that conviction carried under the laws of war.*

FEDERAL BUREAU OF INVESTIGATION (UPPER), AND UNITED PRESS INTERNATIONAL

AIR FORCE POLICEMAN *in Korea, Robert Toth (left) was honorably discharged from the service only to be arrested by the Air Force while working in a Pittsburgh steel plant in 1953. Charged in the death of a Korean civilian who had been shot by an Air sentry one night when Toth had been on guard duty, the former airman was flown back to Korea to face a military trial. Toth went free when the Supreme Court held that ex-servicemen may not be tried by court-martial for alleged service crimes (***Toth** *v. Quarles). At right, he hugs his mother and sister on his return to the United States.*

The Justices heard attorneys for the Negroes contending that discrimination by race violated the Fourteenth Amendment, and attorneys for the states insisting it did not.

In June, 1953, the Court ordered a reargument, inviting the Attorney General of the United States to take part. If historical evidence could show how Congress and the ratifying states meant the Fourteenth Amendment to affect public schools, the Justices wanted to hear it. They also wanted argument on the Court's own equity powers. They heard it in December.

The Justices found history conclusive on one point: Public education has gained importance and scope since 1868. On other points history was uncertain, the Justices concluded. They ruled that segregation in public schools deprives children of "the equal protection of the laws guaranteed by the Fourteenth Amendment."

The May 1954 rulings affected 21 states and the District of Columbia. But the Justices did not order specific changes at once. They gave all the states affected a chance to be heard in yet another argument, this one on appropriate remedies.

Some states filed briefs: Oklahoma explained that it would have to rewrite its tax laws; North Carolina and Florida included long reports on public opinion.

On May 31, 1955, the Chief Justice again spoke for a unanimous Court. The cases would go back to the lower courts; these would review the work of local officials facing the problem of unprecedented change.

In the 12 fat volumes of record, the Justices read one plaintiff's testimony. Telling

whole soul and
l. "the only way
ırt our children
d they come up
he official com-
: "We think the
patient efforts of
more than their
ıte prejudices."

presentation is
ists were saying
960's, voters in
the same thing.
makers to Con-
ıres, of course;
ers—a minority
re. People had
cities, but elec-
ed.
tive spoke for
for 33,155. In
ercent of the
y of the state's

representat
legislature
a year in s
was giving
for 18,000
Althougl
cases on v
in state pri
a case on
1946. "Co
litical thic
warned; fe
Neverthe
phis, Tenn
voters fi
Carr, Secre
They asked
in the state
The Tenn
districts sh
so each m
represent a
But the Ge
reapportion

DIVISION OF CORRECTIONS

CORRESPONDENCE REGULATIONS

MAIL WILL NOT BE DELIVERED WHICH DOES NOT CONFORM WITH THESE RULES

No. 1 -- Only 2 letters each week, not to exceed 2 sheets letter-size 8 1/2 x 11" and written *on one side only*. and if ruled paper, do not write between lines. *Your complete name* must be signed at the close of your letter. *Clippings*, *stamps*, *letters* from other people, *stationery* or *cash must not be enclosed* in your letters.

No. 2 -- All *letters* must be addressed in the *complete prison name* of the inmate. *Cell number*, where applicable, and *prison number* must be placed in lower left corner of envelope, with your complete name and address in the upper left corner.

No. 3 -- *Do not send any packages without a Package Permit.* Unauthorized *packages* will be destroyed.

No. 4 -- *Letters* must be written in English only.

No. 5 -- *Books, magazines, pamphlets,* and *newspapers* of reputable character will be delivered *only if* mailed direct from the publisher.

No. 6 -- *Money* must be sent in the form of *Postal Money Orders* only, in the inmate's complete prison name and prison number.

INSTITUTION _____ CELL NUMBER _____

NAME _____ NUMBER _____

In The Supreme Court of The United States
Washington D.C.

Clarence Earl Gideon, Petitioner — vs. — H.G. Cochran, as Director, Division of corrections State of Florida

Petition for a writ of Certiorari Directed to The Supreme Court State of Florida.

No. 790 Misc.

OCT TERM 1961

U. S. Supreme Court

To. The Honorable Earl Warren, Chief Justice of the United States

Comes now the petitioner, Clarence Earl Gideon, a citizen of The United states of America, in proper person, and appearing as his own counsel. Who petitions this Honorable Court for a Writ of Certiorari directed to The Supreme Court of The State of Florida. To review the order and judgement of the court below denying The petitioner a writ of Habeus Corpus.

Petitioner submits That The Supreme Court of The United States has The authority and jurisdiction to review The final judgement of The Supreme Court of The State of Florida The highest court of The State Under sec. 344(B) Title 28 U.S.C.A. and Because The "Due process clause" of The

PLEA OF A PAUPER: *Clarence Earl Gideon (far right) signs copies of* Gideon's Trumpet, *the story of a case that heralded new hope for destitute defendants. Charged with breaking into a poolroom, penniless when brought to trial, Gideon asked the court to appoint counsel. But the judge refused, saying that Florida law provided indigent defendants with counsel only if they faced the possibility of the death sentence. Convicted, Gideon spent hours in the prison library consulting law books. Then he penciled the petition (left) asking the Supreme Court to hear his case. The Court appointed attorney Abe Fortas (below) to represent him. In 1963, it decided Gideon had been denied a fair trial, adding that every state must provide counsel to an indigent prisoner charged with a felony (Gideon* v. *Wainwright). Later, in a retrial, his lawyer won acquittal for Gideon.*

NATIONAL GEOGRAPHIC PHOTOGRAPHER ROBERT F. SISSON © N G S

Wher
Carr, th
Justices
districts
States;
setting
that mi
matter f
Justic
If a stat
than anc
districts
protecti
"debase
court fo
In Ma
case bac
decide. I
states w
courts f

BRIAN LANKES, TOPEKA CAPITAL-JOU

LESSONS IN EQUALITY: *When a white public school turned away Linda Brown (left, later Mrs. Charles D. Smith, of Topeka, Kansas), her father contended that segregated public schools could not provide equal opportunities. Such discrimination infringed his daughter's constitutional rights, he claimed. The resulting case became the most famous in modern Court history. In 1954, unanimously overruling the "separate but equal" decision of the 1896* **Plessy v. Ferguson** *case, the Court shed new light on the "equal protection of the laws" provision of the Fourteenth Amendment. In public systems, the Court concluded: "Separate educational facilities are inherently unequal" (***Brown v. Board of Education***). This ruling affected 21 states with segregated schoolrooms such as the one at right. It also spurred a revolution in the legal status of Negroes in all avenues of life. In 1975, because of this decision, sixth-grader Charles and fifth-grader Kimberly attend desegregated neighborhood schools—with classrooms like the one below.*

A case from
tionment befor
Congressional
——Alabama ap
rejected three r
taining the lov
for a state legi
population, the
tion, the Court
geographic, his

In these cas
Eisenhower ha
his grandfather
might prefer to
ing than popula
should respect
districts, he fou
to take action:

"ALMIGHTY
ence upon
us, our parents

As superviso
New York law,
room prayer in
public schools,
as set forth in t
Almighty God
security" in dan
prayer to local
cluding the boa

WOLFF, BLACK STAR

ɔnal appor-
n 1964 that
pop...tion.
trict judges
state. Sus-
new rules
e based on
in popula-
es valid for
alone.
(President
the Court
that a state
in lawmak-
l the Court
ıgressional
for courts
with him.

ır depend-
sings upon
try."
tion under
this class-
o place in
r children,
ence, that
the "best
nded their
ted it, in-
ı voted in

1958 for the prayer to open each school day.

Some parents objected; they feared that if government may regulate or require any religious practice in a public school it gains power over matters that should be free.

The classroom ceremony offended families who were Jewish, Unitarian, members of the Society for Ethical Culture, and nonbelievers. Steven I. Engel and four other parents asked a New York court to order the prayer discontinued. New York's constitution and the Nation's forbid any "establishment of religion" by law, they insisted.

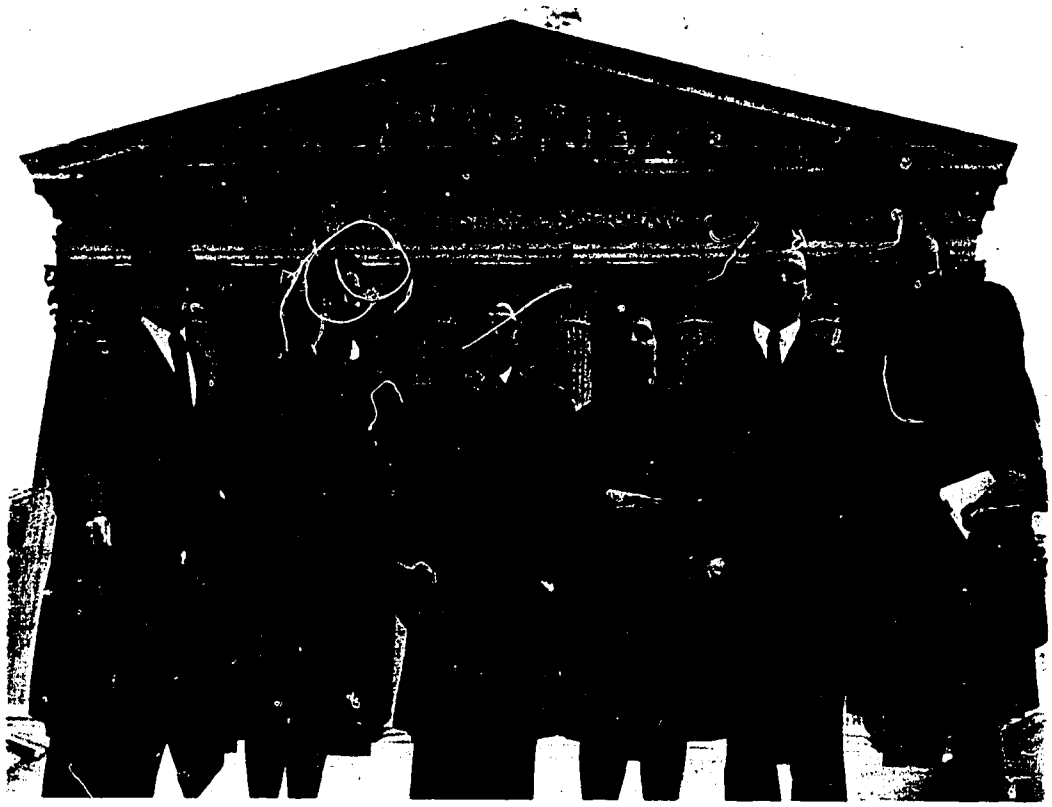
William J. Vitale, Jr., and other board members replied that the prayer gave moral training for good citizenship. On request, they said, any child would be excused.

By adopting the Regents' prayer, schools did not prefer or teach religion, New York courts held; but schools must not compel any child to pray. In 1961 the Supreme Court took *Engel* v. *Vitale* for review; it let religious groups and the Regents file special briefs as *amici curiae*, "friends of the court." The briefs outlined the controversy.

For Engel: Americans have been a devout people; but to study their history is one thing, to worship God is another. By composing and instituting a prayer, the 13 Regents—all laymen and state officials—had taken on the work of clergymen. James Madison had denied "that the Civil Magistrate is a competent Judge of Religious truths or that he may employ Religion as an engine of Civil policy. The first is an arrogant pretention . . . the second, an unhallowed perversion of the means of salvation." On these grounds, Engel said, the First Amendment forbids Congress to establish religion, the Fourteenth forbids the states.

For Jewish groups: Prayer can never be "nonsectarian." Differences in its forms

UNCONSTITUTIONAL ACT OF FAITH: *Grade-school students begin the day with a prayer. New York residents claimed that when state officials composed a school prayer they trespassed on the religious guarantees of the First Amendment. Emphasizing separation of church and state, the Supreme Court in 1962 outlawed state prayers in public schools (Engel v. Vitale).*



OPPOSED TO BIBLE READING *and recitation of the Lord's Prayer as daily rituals in public schools, Edward Schempp (left) and his family charged that these practices amounted to establishment of religion by the state. In 1963 the Court held both of the religious observances unconstitutional in public schools.*

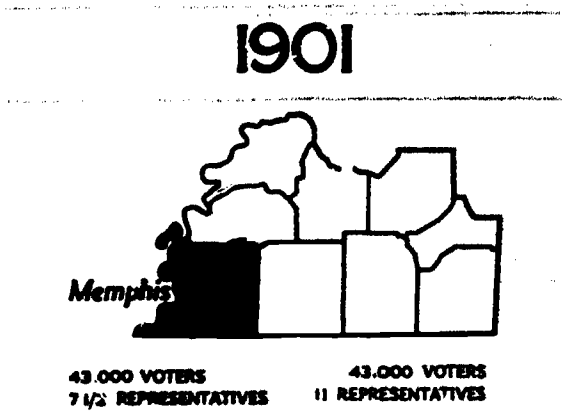
and words go to the essence of faith; no governmental official has constitutional power to enter this realm.

For the Regents: As far as separation of church and state permits, schools must be moral and spiritual guides against threats from "an atheistic way of life," from rising delinquency and crime.

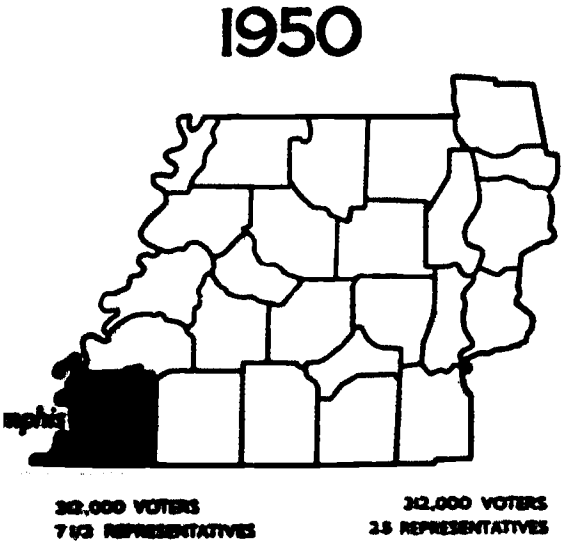
For Vitale and the board: Public schools should not have to give up "any recognition—even on a voluntary basis—of the existence of a Divine Being."

For parents agreeing with the board: No group should "force all others to conform to their views" and demand "the total and compulsory elimination of God's name from our schools."

Justice Black gave the Supreme Court's opinion in June 1962: A "solemn avowal of divine faith," the Regents' prayer was indeed religious—and unconstitutional, because the authors of the Constitution thought religion "too personal, too sacred, too holy," for any civil magistrate to sanction. No government should compose



BATTLE OF THE BALLOT: ***Unequal voting rights in Tennessee cast a Court case. In 1901 eight counties had as many people as Memphis and elected nearly the same number of representatives. By 1950 Memphis' population equaled that of 24 counties. Under the state constitution the city should have gained more representatives, but did not; so the rural vote counted almost four times as much as the urban. Reviewing city voters' complaint that this denied them equal protection of the laws, the Court in 1962 held that judges should hear and decide such claims under the Fourteenth Amendment (Baker v. Carr). The late Chief Justice Earl Warren looked back upon this as the most important and influential single decision in his 16 years on the court. It opened the way to enunciation (in Reynolds v. Sims) of the "one person, one vote" principle and its enforcement by court order in many related cases across the Nation.***



official prayers for Americans to recite.

Dissenting, Justice Stewart thought the decision denied children the chance to share "the spiritual heritage of our Nation."

When lawyers for two other school boards appeared in 1963, they praised the ruling in *Engel* v. *Vitale* but insisted that it did not apply to their cases. In their schools official prayers had no place, although pupils read the Holy Bible and recited the Lord's Prayer every day unless parents wanted them excused.

Professed atheists, Mrs. Madalyn E. Murray of Baltimore and her son William challenged the school exercises for favoring belief over nonbelief. Mr. and Mrs. Edward L. Schempp of Abington, Pennsylvania, wanted to teach their children Unitarian beliefs without "contradictory" practices at school. As taxpayers and parents of students, they had standing to sue.

Reviewing these two cases, the Supreme Court declared again that no state may prescribe religious ceremonies in its schools, that the Constitution stands between the official and the altar.

PUBLIC ANGER over the Supreme Court's powers and decisions ran high in Marshall's day and in Taney's. Charles Evans Hughes saw a third great crisis. Not so long ago, billboards and bumper stickers called for Congress to impeach Earl Warren; attacks on the Court still smolder and occasionally flare.

Such turmoil comes when the Nation confronts new difficulties and new dangers, as well as new notions of what freedom means. The Justices review a critical case arising under the Constitution, as citizens debate the issues it involves. Then the Court rules on questions affecting—and dividing—the whole people. The people judge the Court's opinion for themselves; inevitably they disagree.

Critics have accused the Court of pampering Communists and criminals. Southerners have denounced its rulings on race and civil rights; fresh protest has come from northern metropolises, divided into white suburbs and inner-city ghettos. Legislators have debated constitutional amendments to overrule the Court on reapportionment.

reasonably related to maternal health. Finally, for the stage after "viability," the state may prohibit abortion unless the mother's health is endangered.

Dissenting, Justice White called this decision an "extravagant exercise of the power of judicial review." In the majority opinion, Justice Blackmun acknowledged the Supreme Court's full awareness "of the deep and seemingly absolute convictions that the subject inspires."

Both landmark decisions came after the Court considered long and careful *amicus* briefs on what happens to the prosperous and to the poor, the many and the minorities. Both left the Justices divided. Both provoked bitter controversy among citizens.

As both turn on questions that trouble the spirit, both raise issues that will come before the Court again—under a Constitution made, as Justice Holmes once noted, "for people of fundamentally differing views." While it remains the supreme law of the land, Americans will argue about its checks and balances of power, its guarantees of liberty.

No case presents these themes more clearly than *United States, Petitioner, v. Richard M. Nixon, President of the United States*, argued and decided in the summer of 1974. Felony charges had been lodged against former advisers of the White House; the President himself faced impeachment. Only by impeachment, argued his counsel, could the law apply to him. When the prosecutor of the felony charges tried to obtain evidence in Mr. Nixon's possession, the President claimed an absolute privilege to keep from the courts anything he chose to withhold.

As in John Marshall's day, the Justices agreed to review a case of great import and political delicacy—with the two key precedents rulings by Marshall himself. Sitting on circuit in the trial of Aaron Burr for treason, Marshall had held that a President "may be . . . required to produce any paper in his possession," although a judge might agree that some papers contain matter unfit for public disclosure. And of course there was Marbury's case.

Now a unanimous Court ruled that the President must obey a judge's order to provide evidence needed for fair trial of those accused: executive privilege, in this instance, must yield to due process of law.

AS LONG AS the Supreme Court remains the living voice of the Constitution, it will have to say what the law is. This is "the very essence of judicial duty," by John Marshall's own definition. Other citizens will have to speak, with the Justices, to defend the principle James Madison proclaimed: "While we assert for ourselves a freedom . . . we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us."

For the Supreme Court alone cannot sustain the heritage of equal justice under law. Although the Court symbolizes the judicial power of the United States in action, it shares its highest duty with everyone who loves liberty. And, as Abraham Lincoln asked in 1861, "Why should there not be a patient confidence in the ultimate justice of the people?"

Within the Court Today

"I THOUGHT they would, well, talk Latin or something." The visitor had heard argument at the Supreme Court for the first time, in *U. S.* v. *Nixon*. On another occasion, a high-school girl reported "shock" that a black-robed Justice could rock comfortably in his high-backed chair and actually laugh out loud. And a family on a summer tour, admiring the Great Hall outside the Courtroom, noticed a white-haired man in a blue business suit: Chief Justice Warren E. Burger, who paused in his errand to shake hands and welcome them.

"Our remoteness," says the Chief Justice, "is a result, not an objective; it's just that we're so busy. . . ."

To its majestic setting and moments of sheer ritual, the Supreme Court brings its distinctive manner of working in public—by listening to one lawyer at a time and asking tough questions. Its atmosphere mingles informality with dramatic tension. In a city of bureaucracy, it keeps the directness of a group of nine. It cherishes its courtesies.

Pleasant-spoken guides convey this mood when they explain the Courtroom to members of the public. No, there's no jury; there are no witnesses; the Justices don't need them because they review the record of what happened in some other court.

The guide points out the sculptured marble frieze overhead: to your right, on the south wall, great lawgivers of the pre-Christian era; to your left, those of Christian times. A note of pride enters his voice as he indicates the panel over the main entrance, the one the Justices face: Powers of Evil—Corruption, Deceit—offset by Powers of Good—Security, Charity, Peace, with Justice flanked by Wisdom and Truth.

"The Republic endures and this is the symbol of its faith." So spoke Chief Justice Charles Evans Hughes on October 13, 1932, when he joined President Herbert Hoover in laying the cornerstone of the new Supreme Court Building. In those days many had cause to doubt his words; since 1929 the country had been sinking deeper into the Great Depression.

Five months later the Chief Justice administered the Presidential oath to Franklin Delano Roosevelt. By October 7, 1935, when the Supreme Court convened for the first time in its new home, the national mood was less desperate.

Nations and empires have vanished since those days; but the Republic, though embattled or distraught in a tumultuous world, has endured. So has its faith, a stubborn one. So has the Supreme Court, surviving its epic collision with F.D.R. and more than one onslaught in recent years.

Gleaming bone-white and austere among its distinguished neighbors on Capitol Hill, its stately façade evoking the long glory of ancient Rome, the Supreme Court Building imposes a mood of decorum. Nothing less than a bedrock issue such as *U. S.* v. *Nixon* or the question of the death penalty brings out spectators to crowd the white plaza before it and shout encouragement to counsel as they enter—and even then the sense of order strikes observers.

That aura of formality is no accident.

When architect Cass Gilbert submitted his design in May 1929, he planned "a building of dignity and importance suitable . . . for the permanent home of the Supreme Court of the United States." Gilbert had been chosen by a commission led by Chief Justice William Howard Taft. Associates were Cass Gilbert, Jr., and John R. Rockart, with executive supervision by David Lynn, Architect of the Capitol.

WITH PRACTICED COURTESY, *a staff member explains details of the Courtroom to visitors—from the Justices' chairs of varying styles, chosen for individual comfort, to the ceiling's motif of lotus blossoms, emblems of endurance. In the frieze above the bench, the central figures symbolize the power of government and the majesty of the law.*

JOSEPH H. BAILEY © N.G.S.

Into the building the architects put about three million dollars' worth of marble. For the exterior walls alone a thousand freight-car loads of flawless stone came from Vermont—including a single 250-ton slab destined for sculptor James E. Fraser's allegorical figures at the entrance.

Georgia marble was chosen for the outer walls of four courtyards that divide the building into a cross-shaped center core and a gallery of offices and corridors. Nearly square, the resulting structure is 92 feet high and stretches 385 feet on its longest side. The interior walls are faced with Alabama marble.

Opposite the formal entrance, at the east end of the aptly named Great Hall, is the Court Chamber proper—82 by 91 feet, with a coffered ceiling 44 feet high. Gilbert walled this imposing room with Ivory Vein marble from Spain. For the 24 massive columns he insisted on marble of a particularly delicate tint, called Silver Gray or Light Sienna Old Convent, from the Montarrenti quarry in Italy. An expert made a special trip to the quarry to see whether it would be possible to remove such huge chunks as the plans demanded.

From Italy the rough stone went to a firm of marble finishers in Knoxville, Tennessee, who dressed and honed the blocks into 72 slightly tapered cylinders, 11 feet in circumference at the widest. Three sections went into each 30-foot column, topped by an Ionic capital.

Darker marble from Italy and Africa gives color to the floor, and against this rare stone the room gains richness from its fittings: tones of red in carpet and upholstery and heavy draperies, highly polished luster in solid Honduras mahogany, gleaming bronze lattice-work in gates to the side corridors. Beyond the windows, fountains sparkle in the sun. And since 1973, new lighting, new paint, and new gilding have brought the ceiling to a brilliance time had dimmed since its installation.

Neither Taft nor the architect lived to see their dream building completed. Taft died in 1930, Gilbert four years later.

Not everyone liked the new building. Associate Justice Harlan Fiske Stone, who later became Chief, at first called it "almost bombastically pretentious . . . wholly inappropriate for a quiet group of old boys such as the Supreme Court." One of the old boys said he and his brethren would be "nine black beetles in the Temple of Karnak." Another—undoubtedly thinking of exotic pomp rather than domestic party symbols—remarked that the Justices ought to enter it riding on elephants.

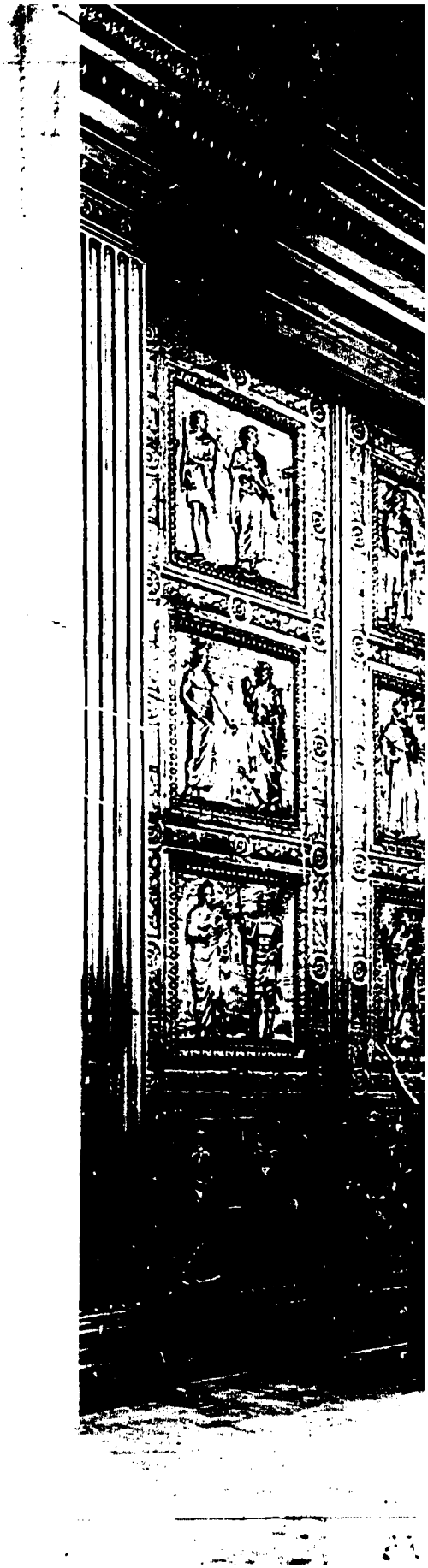
Such comments suggest how different men have regarded their own remarkable positions of power, prestige, and responsibility in the life of the Nation. Off the bench their successors show a similar concern—to keep a sense of human perspective in their marble temple. As Chief Justice Burger has said, "This is a select company—not because we are all-knowing, but because we were selected and we are here."

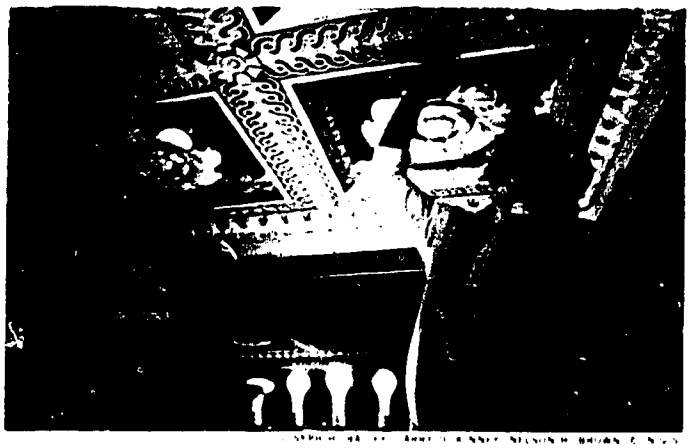
The President appoints Justices with the advice and consent of the Senate, which takes its duty soberly. Since 1789 the Senate has rejected roughly one out of five formal nominations, and argued others at length. For a solid reason: As one Justice says, "Once we're here, they can't fire us."

Article III of the Constitution provides that the Justices, and all other federal judges, hold their offices "during good Behaviour." (And while they serve, their pay cannot be cut.) They may resign at any time, or retire when eligible. Once confirmed, however, they may be removed—in accordance with

JOSEPH J. SCHERSCHEL © N.G.S.

TRIUMPHS OF MANKIND *in developing a just society blazon the bronze doors at the main west entrance. Eight relief panels trace the growth of law from ancient Greece and Rome to the young United States. Each door weighs 6½ tons, and slides into a wall recess when opened. Tortoises (left), chosen as symbols of righteousness and longevity, support bronze lamp standards in the foyer.*





Article II—only by "Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors." In effect, they serve for life. Never in the Nation's history has a Justice left the bench convicted.

When he takes his oath to uphold the Constitution and dons his robe, a Justice can enjoy an almost Olympian detachment. Members of the Court shun much of Washington's social life, and find it prudent to keep relationships with legislators and Presidents courteous but at arm's length. Of course, the Court's budget must be supported before Congress, and codes of judicial conduct urge Justices to express their views on matters affecting the administration of the judicial system. But by the very nature of his position, a Justice escapes the pressures and tensions that vex many public servants: the orders or requests from other officials, the demands from constituents, the tactful or ham-handed approaches from lobbyists. At the Court the strongest pressure takes a subtle form, felt in the mind or conscience. Associate Justice William J. Brennan, Jr., has defined it as the awareness of fallible human beings "that their best may not be equal to the challenge."

A single close case exerts its pressure. A rising caseload heightens it. The pressure makes for an air of aloofness, but that is part discipline, part illusion.

"We're a first name Court among ourselves," says one of its members. "Chief" is the single exception. "You feel like saying 'Hi' when you meet them in the hall," comments a staff member, but in fact "Mr. Justice" or "Mr. Chief Justice" remains the standard greeting.

SHRINE AND SEAL OF JUSTICE, *the Court's first permanent home welcomes visitors at the rate of half a million annually. Above, workmen on scaffolds repaint the ceiling of the Great Hall in late 1974, its first renewal since the building opened in 1935. At right, sight-seeing families admire the finished work; an officer of the Court's special police force stands ready to answer questions at the door of the Courtroom.*


W.CENTER
THIRD

NATIONAL GEOGRAP

REPORTER OF DECISIONS *Henry Putzel, Jr., supervises publication of* U Reports, *the official record of the Court's work. Secret rulings and "cla. have found no place in the procedures of the government's judicial brar*

Formality in the Courtroom and the published opinion pays homage to tradition: "my Brother Douglas" or "my Brother Marshall" or "my dissenting Brothers." It also emphasizes the public scope of issues that set the Justices quarreling in print, politely and from the heart. That dignity gains value when the Court considers a question as delicate as the busing of schoolchildren between suburbs and inner city—which, because the majority found no constitutional violation in the existing situation, it foreclosed for the Detroit area in the case announced on July 25, 1974.

Tension always rises at the Court as its term progresses. By statute the term begins on the first Monday in October. By custom it ends when the work is done, normally by July 1. Spring brings the notorious end-of-term crunch. Justice Brennan tells of taking up an end-of-term disagreement with the late Justice Hugo Black, who said of the season: "This place sure cooker and it of men."

Even after the tir Court schedule for tions follow them study. In reality the

MORE THAN work daily ir Building. Among Court appoints to e tioning of its affairs: of Decisions, the M

For all professio Michael Rodak, Jr. the link between th world outside. He a a rising flow of pa agenda as they che the incoming cases.

In 1941 the Cou

121

cases; in 1973, it had 5,065. To deal with the growing workload and prevent a backlog, the Court has increased staff assistance and industry to what many consider the limit. Justice William H. Rehnquist talks with unmistakable repugnance of the possibility that any case might get "anything less than the best attention from any one of the nine." Of the 1973 case total, more than half came from the poor—*in forma pauperis*—people unable to pay the costs. Of such cases, about 27 percent are from inmates of prisons, claiming some violation of rights.

Mr. Rodak pulls samples from a shelf in a room full of files. A convict in Texas escaped the death penalty under the Court's decision in *Furman* v. *Georgia;* he sends a motion, carefully lettered out by hand, for a new trial. A young man in Wyoming—arrested at 17 for auto theft—claims he was denied due process of law, specifically the protection the Court extended to juveniles by a 1967 case, *In re Gault.* (The petitioner misspells it "Gualt," but he has chosen the case in point.)

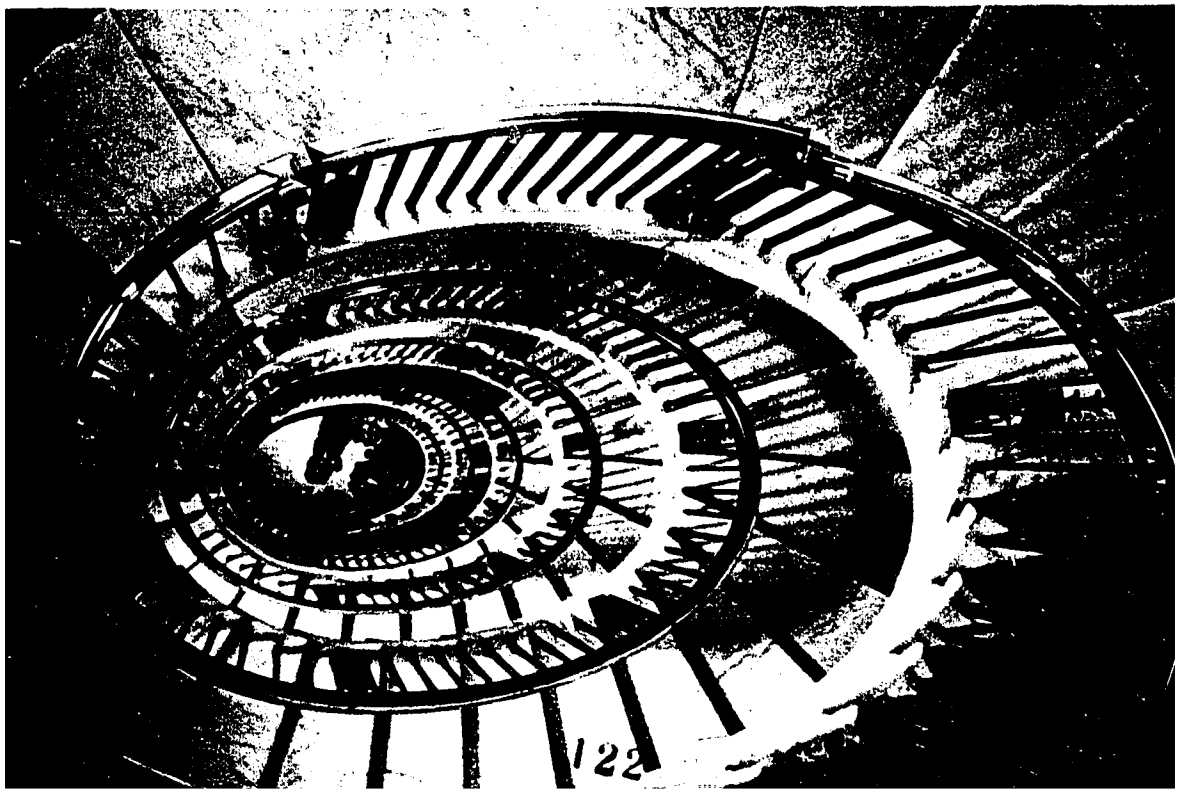
The Clerk's staff separates these from the paid cases, noticing changes in passing: "Now we're getting women's lib cases, electronic bugging cases." Staff routine digests them all, summarizing the legal arguments.

The Clerk also receives lawyers' applications for admission to the Supreme Court bar—some 5,000 a year. He schedules the introductions of candidates appearing in person; and after the Chief Justice has greeted them, the Clerk swears them in as members of this bar.

As administrator and business manager, the Marshal, Frank M. Hepler, is responsible for personnel and financial matters, including payrolls and bills, and for supplies. He coordinates ceremonies—memorial services for a deceased Justice, a successor's

MUCH ADMIRED BUT SELDOM USED *stairs spiral through five floors. Two elliptical staircases, closed to the public, fascinate visitors. Despite such showpieces, the building cost nearly $94,000 less than the $9,740,000 appropriated for it.*

NATIONAL GEOGRAPHIC PHOTOGRAPHER JOSEPH J. SCHERSCHEL © N.G.S.



NATIONAL GEOGRAPHIC PHOTOGRAPHER JOSEPH H. BAILEY © N G S

installation. He directs the Court's police force. He arranges accommodation of dignitaries and other visitors, and is the building superintendent.

When the Court is not sitting, visitors see the two beautiful spiral staircases as well as the Courtroom and Great Hall. Bronze gates and oak barriers close off the corridors leading to the Justices' chambers on the main floor.

On the ground floor, special exhibits have become an extra attraction for visitors in recent years.

New colors relieve the austerity of marble. Green plants in the corridors and flowers in the courtyards are a project of Chief Justice Burger. Gold and deep red replace institution-pale-green in the renovated cafeteria, which is open to the public but reserves midday time for the Court staff in the interest of efficiency. A snack bar supplements the cafeteria.

Visitors who want to see the Court at work should check its schedule in advance. Usually it alternates two weeks of recess, for opinion-writing, with two weeks of "sittings" for Monday-through-Wednesday argument of cases.

Spectators are admitted as seats become available.

U.S. v. Nixon would have jammed the Courtroom many times over just with VIP's, but the Justices insisted on keeping some space for the public, first come first served, as usual.

All visitors must check coats, attaché cases, umbrellas, cameras. The Marshal and his aides may politely find clothes too informal for a Court session. They discourage the presence of small children—"Oh, younger than about six," says a police officer. "But the young ones behave; they seem to catch the atmosphere."

Constantly during a session the aisles are patrolled to see that no one breaks the rules by sketching (permitted only in the press section) or whispering or, as officially described, expressing "favor or disfavor" at arguments or opinions.

The Marshal has jurisdiction over Court

IN HIS ROLE AS LEADER *of the third branch of government, the Chief Justice confers often with its key officials as well as with officers of the Supreme Court: from left, the Marshal, Frank M. Hepler; the Clerk, Michael Rodak, Jr.; the Reporter of Decisions, Henry Putzel, Jr.; the Librarian, Edward G. Hudon. At the Chief Justice's right sits his secretary, Mary Burns; at his left, Administrative Assistant Mark W. Cannon, with Rowland F. Kirks, Director of the Administrative Office of the U.S. Courts, and Judge Alfred P. Murrah, second Director of the Federal Judicial Center.*

AMERICANA *from the Supreme Court's past goes on display: The Court's first Curator, Catherine Hetos, prepares an exhibit of architect's sketches, sculptural studies, and plans for the majestic building. Chief Justice Burger discovered a plaster model of the building in a storage room in 1969 and concluded that such memorabilia belong in areas open to the public. Now, portraits and busts of former Justices enhance the corridors, while documents and such prized relics as John Marshall's courtroom chair occupy the ground-floor exhibit area.*

pages, whom he appoints. In years past, all the pages were chosen when they were high-school freshmen. Since 1973, however, night law students have been among the young men and women selected. Linda Carlton was the first of these.

While Court is in session, the pages wait alertly on small straight chairs behind the bench. They move smoothly and swiftly to pass notes from Justice to Justice. They may disappear behind the red draperies to deliver a message, to fill a water glass at one of two fountains on the rear wall, or to obtain reference material from the library. They may have unusual errands, as Justice Harry A. Blackmun recalls from his first day on this bench—June 9, 1970:

"I had taken my seat, and was examining things. I pulled open a drawer in the bench, and found some cough drops. And a copy of the Constitution, stamped 'O. W. Holmes' and signed by Justice Frankfurter, a successor in this seat. The Marshal brought me a Bible to sign—presented by the first Justice Harlan and signed by all the Justices since. Suddenly Byron White was leaning over to me, whispering. 'Harry! Harry, where's your spittoon?' He snapped a finger—softly—for a page. '*Get the Justice his spittoon!*' "

Today the spittoons serve as wastepaper baskets. Before each chair at the four counsel tables lie white goose-quill pens, neatly crossed; many lawyers appear before the Court only once, and gladly take the quills home as souvenirs. Snuffboxes, once indispensable, vanished long ago, along with arguments that lasted for hours and soared to splendid heights of oratory.

OPENING FORMALITIES link the current day to the past. The Marshal or Deputy Marshal acts as Crier. A few minutes before 10 a.m., Crier and Clerk, formally dressed in cutaways, go to their desks below the ends of the high bench. Pencils, pens, papers, and briefs are waiting at each Justice's place.

At their tables, attorneys glance over notes or confer softly. A young man may fidget slightly, smoothing hair that falls to his collar, while a veteran checks his watch. Seconds will count, for today each counsel has only 30 minutes—unless he or she has a very unusual case.

Meanwhile, the Justices themselves, summoned by buzzer, have gathered in their conference room. Each shakes hands with all the others, even if they were chatting a few minutes earlier. Chief Justice Fuller instituted this unvarying custom as a sign that "harmony of aims if not of views is the Court's guiding principle." Then they don their black robes and assemble behind the red velvet draperies.

Promptly at 10 the Crier brings down his gavel. Everyone rises instantly as he intones: "The Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States!"

Even on routine days these moments never lose their drama. It rises to throat-drying intensity on occasions when great issues are in the balance.

Simultaneously, as the Crier speaks, the nine Justices stride through openings in the curtains and move to their places. The Crier chants his call for silence: "Oyez! Oyez!! Oyez!!!" From the centuries that Anglo-Norman or "law French" was the language of English courts, the word for "Hear ye!" survives.

Steady-voiced, the Crier continues: "All persons having business before the Honorable, the Supreme Court of the United States, are admonished to draw near and give their attention, for the Court is now sitting. God save the United States and this Honorable Court!"

The gavel falls again. The Justices and all others take their seats. Visitors unacquainted with the Court can check identifications against a card-size seating chart. (As men who, for their power, get remarkably little publicity, Justices sometimes go unrecognized for coffee in the cafeteria.)

On their high bench the Justices suggest the variety of American life: men of differing backgrounds and philosophies, temperaments and accents.

In the center sits Chief Justice Burger, a native of Minnesota, a lawyer in private practice there for 21 years, Assistant Attorney General of the United States for three years, a judge of the Court of Appeals for the District of Columbia from 1956 to 1969. He came to this Court in June 1969, appointed by President Nixon.

Seniority determines the seating of the eight Associate Justices, alternating between the Chief's right and his left. (For the ordering from a spectator's vantage point, see page 112.)

At the Chief Justice's immediate right sits the senior Associate, William Orville Douglas, the "hiking man" who completed 36 years of service on April 17, 1975. No Justice in history has served longer. A colleague says, "*Nobody* knows the cases of those 36 years like Bill Douglas!"

Appointed by Roosevelt in 1939, he has written the story of his early life in a notable autobiography, *Go East, Young Man*, and given his own vivid account of practicing law in New York City and Yakima, Washington, teaching at Columbia and Yale, chairing the Securities and Exchange Commission, and acquiring his celebrated zeal for conservation and for outdoor life.

At the Chief's left sits William Joseph Brennan, Jr., formerly a judge of the New Jersey Supreme Court, a Democrat appointed by Republican President Eisenhower in 1956.

To Douglas's right: Potter Stewart, of Ohio, former judge of the Court of Appeals for the Sixth Circuit, youngest federal judge in the country when appointed at 39, named to this Court by Eisenhower in 1958.

Thurgood Marshall, born in Baltimore, judge of the Court of Appeals for the Second Circuit from 1961 to 1965, Solicitor General from 1965 to 1967, and named to the Supreme Court by President Lyndon B. Johnson in 1967.

Lewis F. Powell, Jr., Virginian, in private practice in Richmond from 1932 until 1971 (except for war service, 1942 to 1946), coming to this Court in 1972 by President Nixon's appointment with a long record of leadership in legal circles.

From the Chief Justice's left, after Justice Brennan: Byron Raymond White of Colorado, former Deputy Attorney General, appointed to the Court in 1962 by President John F. Kennedy.

Harry A. Blackmun, in practice in Minnesota for 16 years, counsel to the Mayo organizations for a decade, judge of the Eighth Circuit Court of Appeals from 1959 to 1970, named to this Court by Nixon.

INNER COURTYARD, *one of four, offers a springtime setting for a midday break enjoyed by law clerks and secretaries, messengers and pages, with snacks available from carry-out facilities on the ground floor. "You see," says one of the Court's staff members, "this place is something more than nine overpowering presences."*

William H. Rehnquist, born in Milwaukee, a lawyer in Phoenix from 1953 to 1969, Assistant Attorney General until 1971, taking his seat here on the same day in 1972 as Justice Powell, also a Nixon appointee.

Though muted by the occasion, individuality shows clearly as the Justices begin their work. Usually, as the first item of business, the Court admits attorneys to its bar. Then, if an opinion is ready for release, the Chief Justice calls for it, and its author announces it. A dissenter may speak for those Justices who disagree: "...we think the Court muddies the waters further... we would affirm the judgment below...."

Probably many visitors expect the proceedings to be solemn, almost holy, but beyond laymen's understanding. "Oh, some cases are extemely technical," remarks Justice Stewart disarmingly, "tax or patent cases, and I wouldn't understand them if I hadn't done the homework. But many of them anybody can comprehend—the capital punishment cases, for instance. And our procedure's simpler than other courts'—more informal."

Argument is easier for all to follow since the Justices approved a change in the shape of their bench. "I remember when I used to argue cases here," a senior lawyer recalls. "I would get two questions at once, from opposite ends of the bench—the Justices couldn't see or hear each other." In 1972, at the suggestion of the Chief Justice, the bench was altered to its present shape, with two wings each set at an 18-degree angle, a form that has been widely used in American courts since the mid-1950's.

Even the technical cases can stir alert attention as the lawyer begins—"Mr. Chief Justice, and may it please the Court..."—and develops his theme—"...insurance companies are entitled to justice like anybody else...." The questions start. Resonant, low-pitched queries from Justice Rehnquist: Tidewater-Richmond inflections as Justice Powell says, "I don't want to interrupt your argument, but...."

Justice Stewart leans forward, cheek on right hand: "I've heard it, and read it, and perhaps even written it many times...."

Justice White rocks briskly, swings forward to press a line of questions, stirs a

CRAFTSMANSHIP *and style concern specialists behind the scenes. In the carpentry shop, Edward F. Douglas (left) and Frank Howarth build a Justice's chair; the shop produces custom furniture for the Court, such as finely worked bookcases in the library. Below, Ted Atcherson trims the hair of Barrett McGurn, the Court's public information officer.*

l in a statute: "... the Congress
ıny things that I wonder at. . . ."
distraction on a fine spring day:
l breaks off in midsentence, ducking
bing and swatting with both hands
p? a bee?—and Justice White sym-
: "It's very dangerous here."
veiled ruefulness a lawyer remarks,
ny time is running short"; or the
ıstice may offer a gentle reminder,
el, you are now using up your re-
ne." Or the other way around: "We
en much of your time with our ques-

onstitution
r "all Cases
ublic Minis-
: Court sits
s no appeal.
s are filed—
t sheer bulk

ia in 1952

over water from the Colorado River, the Court appointed a special master in chancery, George I. Haight of Chicago, to take evidence and make recommendations. Haight died in 1955; his successor was Simon H. Rifkind of New York City. From 1956 to 1958, Rifkind heard 106 witnesses and took depositions from 234 others.

The completed trial record covered more than 26,000 pages. Briefs and other documents filed by the states took about 4,000 more. Rifkind's own report, 135,000 words, went to the Court in January 1961. The Justices heard 16 hours of oral argument in the fall of 1961, six hours more in November 1962. The Court's decision, in 1963, favored Arizona.

More numerous, but mercifully shorter, are cases from state courts. If any state tribunal decides a federal question and the litigant has no further remedy within the state, the Supreme Court may consider it.

Most common—roughly two-thirds of the total—are requests for review of decisions of federal appellate or district courts. "Most of the time," observes a Justice, "it's the rights of someone we'd never meet. . . ."

The great majority of cases reach the Supreme Court as result of its granting petitions for writs of certiorari, from the Latin *certiorari volumus*, meaning "we wish to be informed."

Normally the "writ of cert" says in effect to an appellate court, "Send us this case you decided recently." In very rare instances a writ of certiorari before judgment says, "Send us this case you haven't decided yet." As in *U. S. v. Nixon*, it enables the Court to act with maximum speed in unusual cases of great public importance.

But "each case has supreme importance to the people involved," as Justice Stewart observes, and the number of petitions filed rises from year to year. Justice Brennan noted an increase of 75 percent in his first seven years with the Court. Filings went from 2,185 in the 1961 term to 3,643 in 1971 and 4,640 in 1973. Deciding which cases to decide is a load in itself.

Each Justice determines how he will vote on each certiorari petition, usually with the help of a law clerk's memorandum. Since 1972, five Justices have been utilizing a

"cert pool" system, open to any Justice who wishes to join. Clerks from their chambers take turns writing a "pool memo" on a batch of petitions. This memo circulates among the five—Burger, White, Blackmun, Powell, Rehnquist—and each can use a clerk of his own staff for further research. The other four Justices prefer a memo from their own clerks or read the petition itself. Roughly 70 percent of all petitions reach the end of the road on the vote at this stage, without further discussion.

Of the cases remaining, the Justices screen the problems closely—by a process that they explain freely in outline. They meet on Wednesdays and Fridays during term time in a conference room as secret as any in the government. In a capital full of classified matters, and full of leaks, the Court keeps private matters private. Despite the speculations of reporters, details of discussion and voting are simply not revealed.

No outsider enters the room during conference. The junior Associate Justice acts as doorman and messenger, sending for reference material, for instance, and receiving it at the door.

Five minutes before conference time, 9:30 or 10 a.m., a buzzer summons the Justices. They exchange their ritual handshakes and settle down at their long table. The Chief sits at the east end, the senior Associate at the west.

Before each Justice is a copy of the day's agenda. Each decides for himself when he should disqualify himself from taking any part in a case.

The Chief opens the discussion, summarizing each case. The senior Associate speaks next, and comment passes down the line. Voting follows the same order of seniority. To qualify for review, a case must get at least four votes.

Counsel then submit their briefs and records so each Justice receives a set two or three weeks before argument. From these the Justices often make bench memos that highlight facts and points of law and questions for the lawyers.

("I wonder," muses Justice Blackmun, "if we always remember how much power we exercise just in our questioning.")

DRAFTI
escapes
reservec

Para
tight c
ity—th
ing as
agencie
courts.
record;
public;
record.
lished,
Minute
in the
have th
with an

process?"). Criticism—especially on such highly charged issues as abortion, obscenity, and the death penalty—ranging from reasoned analysis to rage. "Dear Sir: You are a skunk!" quotes one Justice wryly. "Name-calling," says another, rather sadly, "comes with the job."

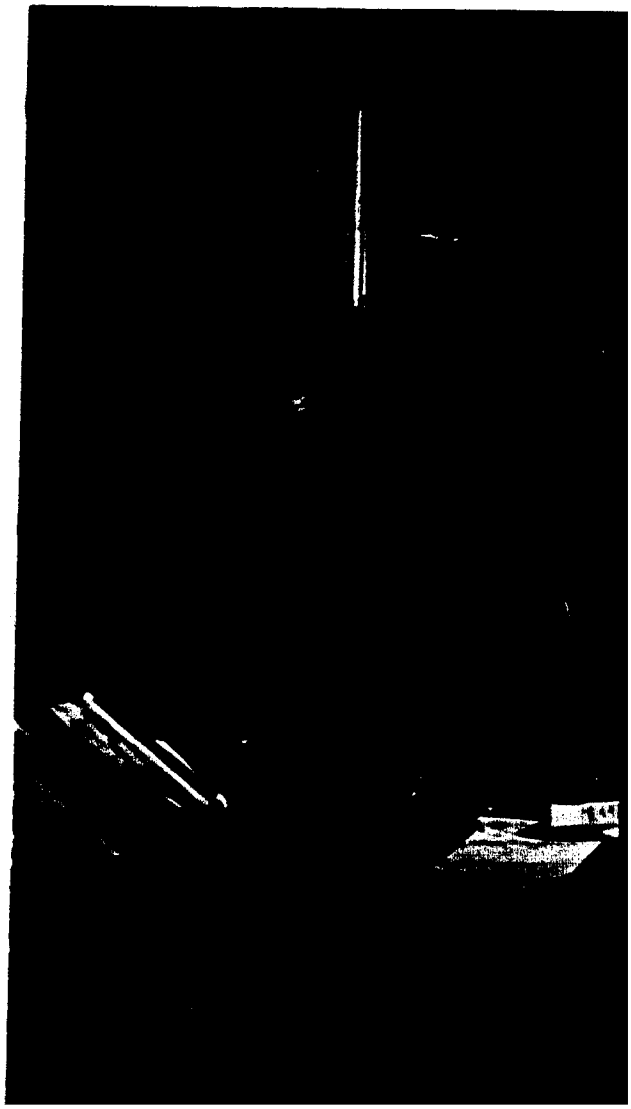
By statute the Chief Justice's duties extend well beyond the Court and his position as its presiding officer. He is also responsible for the administrative leadership of the federal judicial system. He is chairman of the Judicial Conference of the United States, a "board of trustees" for the federal courts. He supervises the Federal Judicial Center with its programs of research and education, and the Administrative Office of the United States Courts, "housekeeper" and statistician for the system. And he serves as chancellor of the Smithsonian Institution, and chairman of the board of the National Gallery of Art. His perquisites, accordingly, include four law clerks, extra secretarial help, and a government car with chauffeur.

In 1972, for the first time, the Chief Justice acquired an Administrative Assistant, Mark W. Cannon, to help meet responsibilities and needs of the federal court system. The Court has also gained two Legal Officers, or staff counsel: James Ginty and Susan Goltz. Ginty defines the role as one with "no formality to it—helping the Court or any Justice any way we can with legal and judicial detail."

Whenever a Justice calls for legal or historical references, he has the help of Edward G. Hudon, librarian and officer of the Court, and his staff of 14. These experts provide research materials from a library of more than 210,000 volumes, accessible not only to the Justices and their law clerks but also to members of the Supreme Court bar, members of the Senate and House, government attorneys, and—by special arrangement—visiting scholars and journalists who cover the Court regularly.

Professional writers themselves, Justices spend hours of hard work on draft opinions. When an author is satisfied with his document, he sends it to the print shop, which works under rigid security rules on the ground floor. Often, on getting his proofs, the writer finds his work has only begun. He circulates copies, numbered for security, for the reactions of his colleagues.

Constantly the Justices exchange comments, by memo or at the lunch table. To discuss ideas and wording by telephone,



WORKING PAPERS *of the conference room —notebooks, memos, briefs—await the Justices' return from lunch on a Friday in the regular term. Here they determine which cases to review, what decisions to hand down. Conference clerk Alvin Wright distributes files, he will leave when the Judges come back. The junior Associate Justice takes in or sends out messages at the door, to safeguard the absolute privacy of the Court's confidential discussions.*

they use a private line that does not go through the switchboard. Draft dissents may prompt revisions or change votes, even enough to create a new majority.

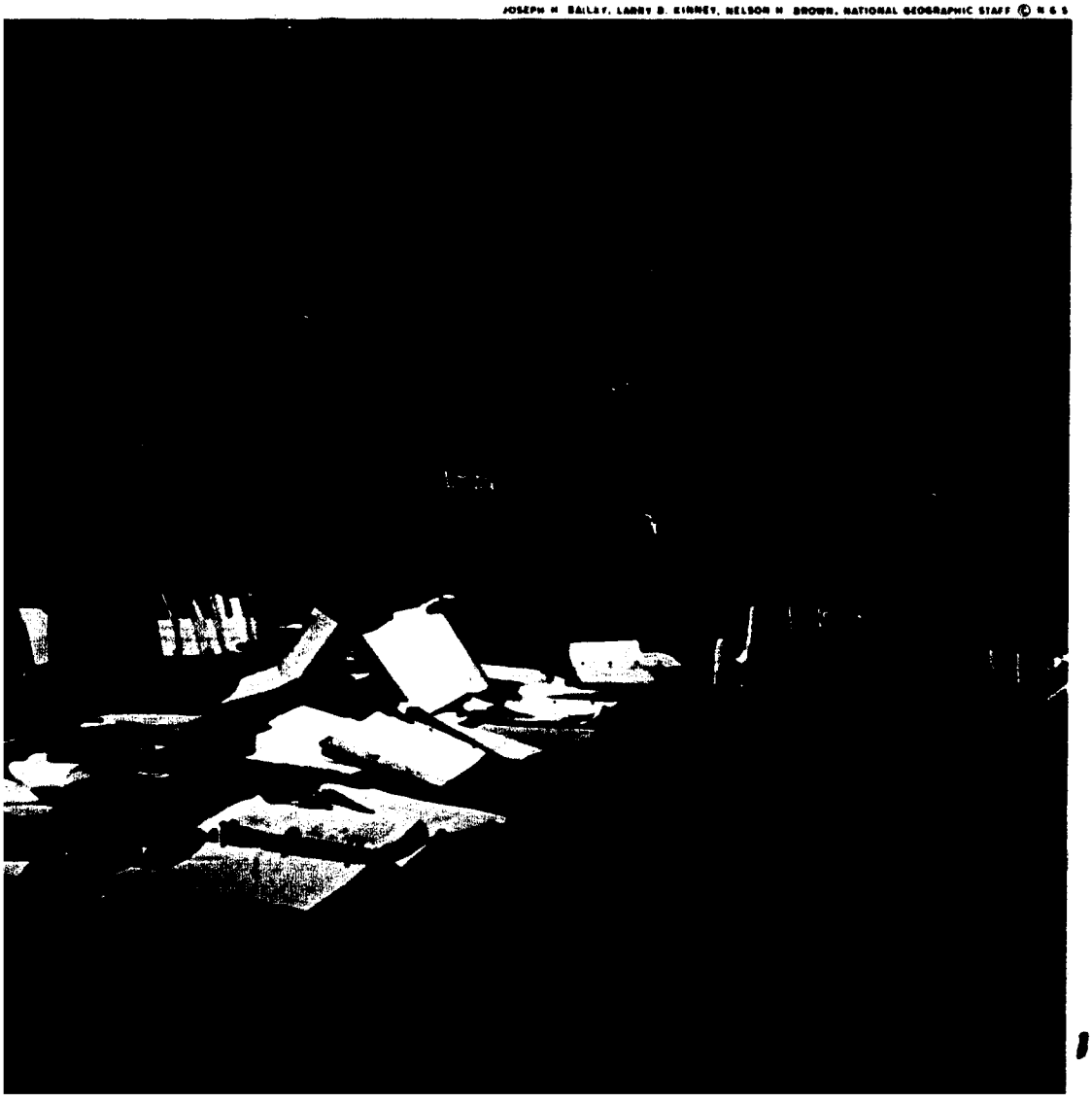
Moments of diversion lighten the routine: table tennis with clerks; for Justices Stewart, Rehnquist, and the Chief, carol-singing at the Court's Christmas party; for Justice White, a star athlete who earned his way through Yale Law School as a professional halfback, basketball in the Court's small gym.

Special duties interrupt the routine. Each member of the Court has jurisdiction over one or more of the 11 federal judicial circuits. As Circuit Justice he may issue injunctions, grant bail, stay an execution.

But finally—when all corrections and revisions are in hand—a master proof of each finished opinion goes down for printing. On the day of release, final copies go to the Clerk for safekeeping, and to the Reporter of Decisions: Henry Putzel, Jr., with a staff of nine, writes headnotes—short analytical summaries of the opinions. He also supervises publication of *United States Reports*, official record of the Court's work.

In the press room, reporters wait swapping shop talk over coffee in throwaway cups: "... this crazy lawyer ..." "That the upstate sludge case?" ... "Not worth getting excited about—rights for women ..." "... Congressional action ..." "I stand with Marshall and Douglas."

Public information officer Barrett McGurn distributes the journalists' copies



JOSEPH H. BAILEY, LARRY B. KINNEY, NELSON H. BROWN, NATIONAL GEOGRAPHIC STAFF © N.G.S.

JUSTICES *of the Supreme Court in 1975, these nine members complete a list of 100 Judges who have served since 1790. From left: seated, Associate Justices Potter Stewart, William O. Douglas: Chief Justice Warren E. Burger: Associate Justices William J. Brennan, Jr., Byron R. White; standing, Associate Justices Lewis F. Powell, Jr., Thurgood Marshall, Harry A. Blackmun, William H. Rehnquist.*

Nominated by the President and confirmed by the Senate, the Justices hold office during "good Behaviour"—for life or until retirement.

saw fit, absolute privilege to withhold his records. Briefs in his behalf cited the Constitution's separation of powers. Briefs for the United States stressed the unique position of Special Prosecutor Leon Jaworski, the historic duties of the courts, the Constitution's structure of checks and balances.

Because the Supreme Court called for argument on technical issues of jurisdiction and procedure, these took on interest far beyond the ordinary. They might foreshadow the decision that would resolve a constitutional crisis—or reveal a crisis beyond the peaceful ways of law.

"Nothing happened," said one bemused spectator after the three hours of argument on July 8. "It was so . . . ordinary," remarked another. The Court's formal ritual and informal manner had not varied.

Texas drawl in his voice, Mr. Jaworski declared that ". . . boiled down, this case really presents one fundamental issue: Who is to be the arbiter of what the Constitution says?" The President was making himself the sole judge: he "may be right in how he reads the Constitution. But he may also be wrong."

Justice Stewart, matter-of-factly: "Well, then, this Court will tell him so."

More than one a minute, questions came from the bench.

Justice Douglas saw at "the heart of this case" the rights of defendants in a criminal trial. The President's advocate, James D. St. Clair, urged the Court to avoid matters pending in impeachment: Justice Brennan commented dryly, "Any decision of this Court has ripples."

Justice Marshall pressed Mr. St. Clair to

concede that the case was one for this Court's decision; no one asked bluntly if the President would obey its order. Justice Powell, even-toned, forced the issue of absolute privilege and secrecy: Even in a criminal conspiracy? Yes, said the President's lawyer, "even if it's criminal."

Seasoned lawyers do not escape tension here. Once Mr. St. Clair with a slip of the tongue asked the court to uphold Judge Sirica; and Mr. Jaworski, in his effectively low-key argument, momentarily overlooked the fact that he represented Judge Sirica's position.

Only 30, but experienced in this Courtroom, assistant prosecutor Philip A. Lacovara contributed a more formal eloquence: "... this President is not in a position to claim ... privilege. ... These conversations ... were in furtherance of a criminal conspiracy to defraud the United States. ..." Surely no charge more sensational had ever come before the Court.

Then he discussed with the Chief Justice, as if in a seminar, the fundamental precedent: *Marbury* v. *Madison*.

At 1:04 p.m. the Chief Justice closed the session: "Thank you, Mr. St. Clair. Thank you, Mr. Jaworski and Mr. Lacovara.

"The case is submitted."

The crowd streamed out into the sun: more than 1,500 had obtained at least a five-minute share of the occasion—a law professor, a Japanese reporter, a nun, a girl with tan shoulders bared by a sunback dress, a white youth with bushy Afro haircut, a middle-aged black man in a cream-colored business suit. Headlines took up the issues: "Shun Gate Case, St. Clair Asks" or "Jaworski: Constitution Is in Peril." The Nation waited.

Death claimed Earl Warren, retired Chief Justice, on the night of July 9; the Court paid him a tribute without precedent. His casket, flag-covered, was placed in the Great Hall to lie in repose, his chair near it. Members of his profession and of the public came, to pause at the bier, gaze at the lighted Courtroom beyond, quietly register their names.

ON A GRAY and muggy July 24, a tense crowd, assembled on short notice, filled the Court Chamber. As the hands of the clock inched past 11, the cry of "Oyez!" rang out. On this occasion the gravity of the opening never altered: Justices and pages alike sat impassive. With somber dignity the Chief Justice took note of the death "of our beloved colleague."

Then he went on to announce the opinion he had written for a unanimous court. "Narrow," some commentators called the decision later. It was, in ruling that here the President's privilege must yield to the demands of a fair trial. "Broad," others called it. It was, in reaffirming "what was said in *Marbury* against *Madison*"—that it is "emphatically the province and the duty" of this Court "to say what the law is." For 17 minutes the summary moved gravely on. "Accordingly, the judgment under review is affirmed." The gavel fell.

"A sledgehammer decision," one newsman called it that night.

On August 9 President Nixon resigned. The publication of three conversations from the disputed 64 had brought his term to an end. At noon that day the Chief Justice administered the oath of office to the new President, Gerald R. Ford.

Observers abroad commented that the entire episode not only reinforced the rule of law in the United States but also enhanced the position of the judiciary in other countries. Few events in a long history have underlined so sharply the Court's role as guardian of the Constitution.

Interviewed outside the Court on the day of decision, a tourist from Waco, Texas, told a television reporter that if the Supreme Court says it, it's the law. On such assent rests the paradox of America, as President Ford has stated:

"Our great republic is a government of laws and not of men. Here the people rule."

WIVES OF THE JUSTICES, *gowned for a formal entertainment, gather in the East Conference Room. From left seated, Mrs. Stewart, Mrs. Douglas, Mrs. Burger, Mrs. Brennan; standing, Mrs. Rehnquist, Mrs. Blackmun, Mrs. Marshall, Mrs. Powell, Mrs. White. The Court's receptions and dinners honor distinguished men and women of the legal profession.*

The Federal Court System

"It's the American way to say, 'There ought to be a law!' And Congress passes a law —on civil rights, or environmental protection, or consumer protection. Common sense alone will tell you, you'll have more lawsuits.

"Everyone wants instant justice," muses District Judge Aubrey E. Robinson, Jr., "like instant therapy, or instant food.

"But as life gets more complex, legal rights get more complex. And we're a complex people, of varied backgrounds. There will always be a time lag in the judicial resolution of disputes."

Comments on the "law explosion" of recent years come from many of the 400 judges sitting in the federal judicial system's 94 district, or trial, courts—where case filings have doubled in 20 years. In fiscal 1974 the district judges received 103,530 new civil cases and 39,754 new criminal cases. The backlog exceeded 100,000.

With a greater burden than ever before, the federal judicial system has entered a period of reform and innovation. In 1968 Congress created a system of U. S. magistrates; in 1974 they handled nearly a quarter of a million matters that district judges would have had to deal with, such as pretrial discovery proceedings. Experiments with videotape promise new and time-saving ways of taking testimony. Computer programs help judges and court clerks keep track of their caseload, or improve the procedure for calling jurors.

In the District of Columbia, one unhappy systems analyst spent a month cooling his heels in the jury lounge. Exasperated, he offered to back up with computer techniques a study the court had undertaken on juror utilization. Resulting reforms saved time for all concerned—and money.

Such measures are especially important because no one wants apparent efficiency at the price of injustice, and the painstaking techniques of courtroom questioning—techniques that John Marshall would find familiar—simply cannot be hurried beyond built-in limits. Fair procedure and sound results count all the more in district courts because about nine-tenths of all federal cases end at the trial level, without appeal.

Only about 15 percent of defendants in federal criminal cases actually go through a trial. Many other cases are settled by plea bargaining: The defendant's lawyer negotiates with the U. S. attorney for something less than the stiffest possible charge, and the defendant pleads either guilty or *nolo contendere*—"I do not wish to contest it."

Judge Walter E. (Beef) Hoffman, who presided in the case of Vice President Spiro T. Agnew, points out that such bargaining is nothing new. "Lawyers have made discreet approaches to other lawyers for years," he observes, but the realities of plea negotiation long went unacknowledged. That, he says, permitted the double vice of invisible proceedings and lack of candor. Now the judge makes the proceedings a matter of record—for later use, if need be.

Appeals in the federal system have increased, of course: nearly 4,000 in fiscal 1960, more than 16,000 in 1974. The 11 courts of appeal sit to correct errors at the trial level or in administrative agencies, and act in effect as regional Supreme Courts.

Here the number of judges varies, depending on caseload, from three in the First Circuit to 15 in the Fifth. In each case, however, they work in panels of three or more; and the odds are, says Judge Ruggero J. Aldisert of the Third Circuit, that "the judicial buck stops here."

Of 1,280 cases decided by his court in fiscal 1972, the Supreme Court granted only four petitions for review. "The Supreme Court's always above us in theory," he says, "but in practice this is the highest court you can get to by right."

From the public generally, the courts of appeal get little attention. "In some of the most controversial cases," Judge Aldisert remarks, "there's nobody present but the lawyers, and the press coverage tends to be skimpy even on interesting cases. At the peak of Watergate, we held that the President may wiretap a foreign spy without a

court order. The press slept through it."

But law schools, he points out, act as a highly critical public, and analyze appellate decisions "unmercifully."

As a source of self-analysis and research, the Federal Judicial Center has played an increasingly important role since Congress founded it in 1967. To the parlors of Dolley Madison's old home on Lafayette Square in Washington, D. C., it brings judges from all over the country. They discuss more effective ways of working with clerks or probation officers, or the painful topic of sentencing. They share grievances and gripes.

Seminars for newly appointed judges ease an awkward transition ("All of a sudden," says one, "lawyers are afraid to ask you to lunch"). Experienced colleagues offer intensive lessons in how to manage complex civil cases or cope with unruly defendants. "I wish we had had this when I was new," remarks a veteran. "I was scared to death to charge a jury."

All told, the center—now directed by Judge Hoffman—trains about 2,000 persons a year, court staff as well as judges.

A similar center for state courts has begun work in Denver, Colorado; and more than 40 states have created State-Federal Judicial Councils. Since state courts may decide federal questions (as in the case of Oregon's "bottle bill") and federal courts must deal with state law on occasion, these councils have obvious value. And coordination of the two systems can end the frustration of lawyers or jurors expected to be in two courts at the same time.

Of the three coequal branches of the federal government, the judicial is by far the smallest. Its personnel numbered only about 10,000 in 1974; its budget hovers in the vicinity of $300,000,000 a year, and runs about one-tenth of one percent of the federal total.

Tiny sums—by government standards—can pay off impressively. Chief Judge Howard T. Markey of the Court of Customs and Patent Appeals tells how his court brought its lagging docket current. The

CECIL LOCHARD, ANN ARBOR NEWS

NOVEL ISSUES *push a rising caseload higher. In 1972 Sonia Yaco, 15 (above), aspired to the Ann Arbor, Michigan, school board; she fought clear to the Supreme Court to put her name on the ballot, although a minor—and lost.*

Banning throwaway soft-drink and beer containers, Oregon's 1972 "bottle bill" survived challenge on constitutional grounds and inspired other state and federal laws designed to protect the environment and conserve energy.

ROBERT REYNOLDS

"I'LL TAKE THIS *to the Supreme Court!*" *Furious, Bill Smith shouts this classic threat at John Jones as they argue the blame for a collision of Jones's expensive car and Smith's heavily-laden truck.*

But to reach even the first rung of the three-level federal court system, their quarrel must qualify as a federal case. The Constitution and Acts of Congress prescribe what matters may come before U. S. courts. Others must be tried in state courts.

If Smith and Jones live in different states—and more than $10,000 is involved—a federal district court can hear their dispute. Either party, if unhappy with the outcome, may ask review by a court of appeals.

Despite his angry promise, Smith in all probability could take his case no further.

"No litigant is entitled to more than two chances, namely, to the original trial and to a review," Chief Justice William Howard Taft told Congress in 1925. It wrote his view into law with the "Judges' Bill."

To reach the Supreme Court, cases must turn on principles of law, or constitutional issues, of far-reaching importance. Of more than 4,000 petitions a year, the highest court accepts about 400—hearing argument on perhaps 180, deciding the rest without debate.

Federal courts also review decisions of administrative agencies such as the Tax Court, the Federal Trade Commission, and the National Labor Relations Board.

Congress has created special, as well as regular, courts:

The Court of Claims hears claims against the United States.

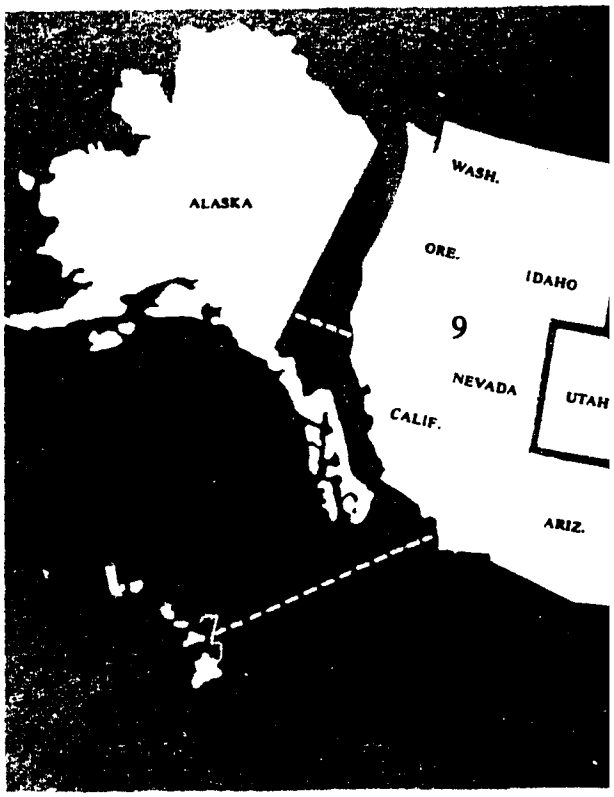
The Customs Court decides disputes over duties on imported goods. Its decisions may be appealed to the Court of Customs and Patent Appeals. The latter also reviews judgments of the Tariff Commission and of the Patent Office.

In the armed services, review normally ends in the Court of Military Appeals. Beyond this lies resort to a habeas corpus proceeding in a district court.

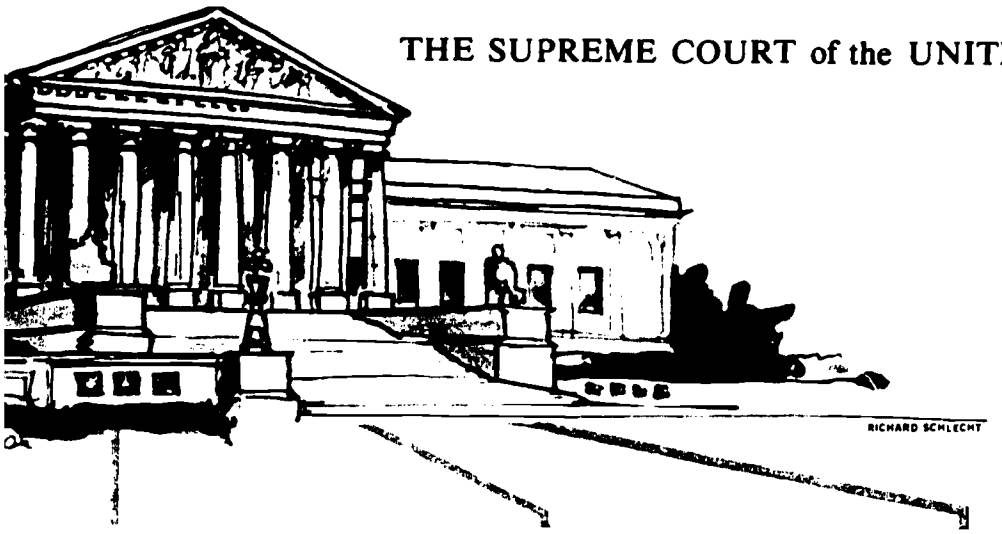
Besides cases from federal courts, the Supreme Court may review decisions of state judges, when cases involve a federal question and litigants have no other remedy left.

Cases from state courts

U. S. district courts with federal and local jurisdiction in the Canal Zone, Virgin Islands, Guam



THE SUPREME COURT of the UNITED STATES



U. S. Courts of Appeals

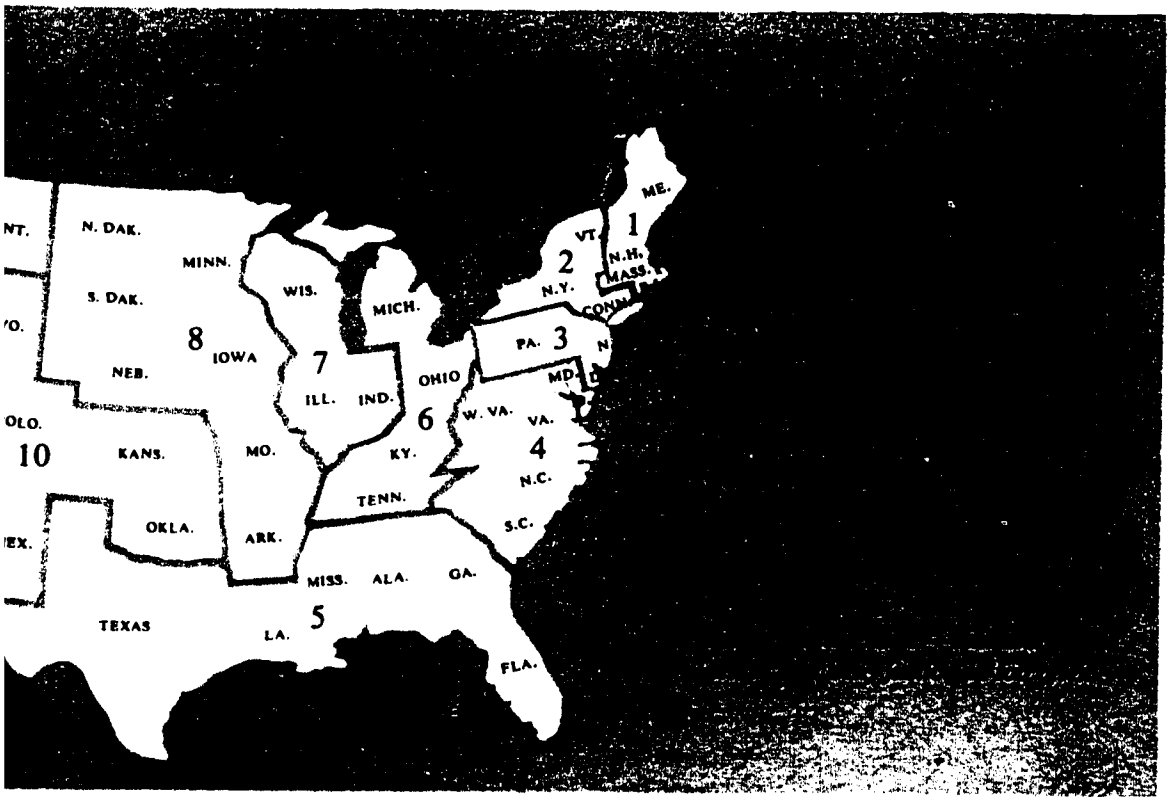
U. S. Court of Claims

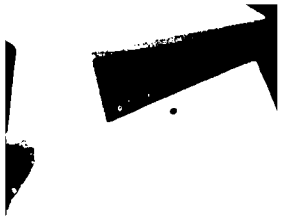
U. S. Court of Customs and Patent Appeals

U. S. Customs Court

U. S. district courts with federal jurisdiction only in the 50 states, D. C., and Puerto Rico

U. S. administrative agencies





f toothpaste. But
genuine wrong."
istating finality."
. "A decision of
rights of twenty
years. But we're
all the time. And
beings—even if
y have a black

nuity, the federal
ard the rights of
the great Chief
aid, this system
s to every man's
operty, his repu-

Index

Boldface numerals indicate illustration references

Acts of Congress, held invalid 25, 27, 47, 54, 59, 81, 82
Adams, John 15, 21-2, 24, 26, **27**
Adkins v. *Children's Hospital* 77, 79
Aldisert, Ruggero J. 144, 148
Antitrust cases 58, 60-2, **66, 67, 68-9,** 134
Associate Justices 15, 42; junior 136; perquisites 137; senior 136

Baker v. *Carr* 103, 105, 110
Bank of the United States 31-2, 33, 41-2; note **33**
Barnette, Walter 86
Bates, Ruby 73, **84**
Bill of Rights 10, 67, 94, 129, 134
Black, Hugo L. 83, 86, 92, 94, 109, 111, 122
Blackmun, Harry A. 11, 111, **112,** 113, 127, 128, 136, **137, 140**
Bradley, Joseph P. 56, **61**
Brandeis, Louis D. 63-4, 67, 69, **73,** 80-2, **93,** 102
Brennan, William J., Jr. 10, 11, 105, **111, 112,** 118, 122, 128, 134, 141, **141**
Brown v. *Board of Education* 97, 100, 102-3, **106-7**
Buchanan, James 44, **44,** 47
Burger, Warren E. 11, **111, 112,** 115, 116, 126, **126, 127,** 128, 130, 136, 139, **140,** 143
Butler, Pierce 69, 71, 79, **93**

Cannon, Mark W. **126,** 138
Capitol, U. S. 8, 21, **24,** 29
Cardozo, Benjamin N. 80, 81, **93**
Catron, John 48
Certiorari **104,** 134
Charles River Bridge v. *Warren Bridge* **38-9,** 42
Chase, Salmon P. 52, 53, **54,** 55, **55,** 56, **56**
Chase, Samuel 26, 29, **31**
Chief Justice 15, 53, **127,** 138; perquisites 138
Child labor 64-5, **74-5,** 77, 82, 83
Chisholm v. *Georgia* 15-6
Choate, Joseph H. 63, 64
Circuit courts 15, 18, 22, 29, 42, 48, 55, 77
Circuit courts of appeals **60,** 77, 85, 144, **147,** 148
Citizenship 43, 44, 47, 55, 60
Civil rights 59-60, 68, 110
Civil War 12, 38, **46-7,** 48-53, **48-9, 50-1**
Clark, Tom C. **149**
Clerk of the Court 15, 122-3, **126,** 139, 140
Cohens v. *Virginia* 34-5, 37
Communist Party 69, 79, 129, 134
Constitution, U. S. 9, 10, 15; adaptability 10, 40; supremacy 10, 26, 111; Amendments: First 67, 68-9, 97, 108, 110; Fourth 96, 97, 129, 134; Fifth 79; Sixth 92; Eighth 111; Tenth 65; Eleventh 16; Thirteenth 53, 67; Fourteenth 53, 55, 57, 59, 62, 68-9, 71, 77, 95, 97, 100, 102, 106, 108, 129, 134; Fifteenth 55; Sixteenth 59; Nineteenth 79; *see also* Implied powers, Interstate commerce, Monetary power, Separation of powers, War power
Counsel, right to 74, 95, **104-5**
Cramer, Maj. Gen. Myron C. 101
Cramer v. *United States* 89
Currency 31, **33,** 52, 55-6, **56-7,** 80
Curtis, Benjamin R. 47, **54**

Dartmouth College 12, **12-13**
Davis, John F. 121, **125**
Debs, Eugene V. 58, 78
Doe v. *Bolton* 111, 113
Douglas, Stephen A. 44, 48
Douglas, William O. 11, 83, 86, 88, 89, 94, **111, 112,** 128, 131, 139, **140,** 141
Dred Scott v. *Sandford* 12, 35, **42-3,** 43, 44, 47, 48, 51
Due process of law 10, 57, 63, 77, 79, 94, 95, 104, 113, 123

Eisenhower, Dwight D. 107, 126, 127, 129
Elaine, Ark. 71-2, **80-1**
Ellsworth, Oliver 15, 20, 22, 40
Endo, Mitsuye 86
Engel v. *Vitale* 107-10, 108
Executive privilege **112,** 113, 141, 143

Fair trial 71-4, 77, 81, 84, 85, 87, 94-7, 105 *see also* Due process of law
Federal court system 144-9, **146-7**
Federal Judicial Center 138, 145, **148-9**
Federalists **16,** 21-2, 24, 27, 29, 31, 41
Field, Stephen J. 52, 58, **61**
Ford, Gerald R. 143
Fortas, Abe 95, **105,** 111
Foundation of the Federal Bar Association 4, 5
"Four horsemen" 79, 80, 83
Frankfurter, Felix 79, 83, 85, 86, 94, 103
Freedom of speech and press 10, 41, 67-9, 71, 76, 134
Fuller, Melville W. 58, 77, 127
Furman v. *Georgia* 111, 123

Gault, In re 123
Gibbons v. *Ogden* **36-7,** 37-40
Gideon v. *Wainwright* 95-6, **104-5**
Gilbert, Cass 83, 115, 116
Gitlow, Benjamin 68, 69, **79**
Glass v. *Sloop Betsy* 16, **21**
Gobitis case 85-6, **96-7**
Goldberg, Arthur J. **36**
Granger cases 56-9, **58-9,** 80
Grant, Ulysses S. 55, 56
"Greenbacks" 52, 55-6, **56-7**
Grier, Robert C. 51, 55, 56

Habeas corpus 46, 48, 50, 58, 71, 77, 88, 92, 104
Hammer v. *Dagenhart* 64-5, **74-5,** 83
Harding, Warren 77, 78, 83
Harlan, John Marshall (1877-1911) 59, 60, 61, **61,** 62, **68,** 127
Harlan, John Marshall (1955-1971) 13, 107
Harriman, E. H. 61, **67**
Haupt v. *U. S.* 88-9, 92, **100-1**
Hepburn v. *Griswold* 55, 56
Hepler, Frank M. **121,** 123, **126**
Hetos, Catherine **127**
Hill, James J. 61, **66**
Hirabayashi v. *U. S.* 86, 98, **99**
Hoffman, Walter E. 144, 145, 148
Holmes, Oliver Wendell 6, 9, 62, 65, 67-8, 69, 71, 72, **72,** 79, 80, 113, 127
Hoover, Herbert 79, 80, 112, 113
Hudon, Edward G. **126,** 138
Hughes, Charles Evans 10, 71, 74, 79, 80, 82, 83, **93,** 110, 115

Impeachment 12, 25-6, 29, 30-1, 53, **54-5,** 113, 118
Implied powers 31-2, 33
Income tax 52, 58-9
Insular Cases 60, **64-5**
Interstate commerce 10, 36, 39-40, 57, 58, 60, 61, 64, 68, 81, 82, 83, 91

Jackson, Andrew 12, 32, 38, 40, 42
Jackson, Robert H. 12, 83, 86, 89, 92, 137
Japanese-Americans 86, **98-9**
Jaworski, Leon **112,** 141, 143
Jay, John 9, 15, **16, 18,** 20, 22, 40; mementos **23**
Jefferson, Thomas 12, 21, 22, 24, 25, 29, 40
Jehovah's Witnesses 83, 85-6, **96-7**
Jim Crow laws 60, **62-3**
Johnson, Andrew 53, **54**
Johnson, Lyndon B. 128
"Judges' Bill" 77, 83, **146**
Judicial Conference, U. S. 138
Judiciary Act; of 1789 15, 18, 25, 27; Jeffersonian 26; lame-duck Federalist 22, 24
Jury trial 50, **50-1,** 72, 74, 85, 89, 92, 130
Justices: appointment and tenure 116-7; number of 15, **16,** 22, 26, 29, 42, 52, 53, 55, 82, **92, 93,** 111

Kansas **40-1,** 44
Kennedy, John F. 128

Kirks, Rowland F. 126
Korematsu v. *U. S.* 86

Labor 58, 77-9, 82-3, 86, **94-5**
Lacovara, Philip A. 143
Leibowitz, Sam **84, 85**
Liberty of contract 62, 71, 77, 79
Lincoln, Abraham 12, 46, 47-8, 49, 50, 51, 52, 53, 83, 113
Lochner v. *New York* 62-3, 70-1, 72, 77, 79

McCulloch v. *Maryland* 31-2, **32-3**
McGurn, Barrett **132, 135,** 139
McReynolds, James C. 79, **93**
Madison, James 9, 10, 25, 27, 108, 113
Mandamus, writ of 25
Mapp v. *Ohio* 95, 97
Marbury v. *Madison* 24-6, **26-7,** 143
Markey, Howard T. 145
Marshal 121, 123, 126, **126,** 127
Marshall, John 10, 11, 13, 15, **19,** 20, 22, 25, 26, 27, **28,** 29, **29,** 32, 36, 37, 39, 40, 110, 113, 148
Marshall, Thurgood 11, 111, **112,** 128, 139, **140,** 141, 143
Merryman, John 46, 48, 50
Military trials **50-1,** 51-2, 88, 92-4, 100, **101**
Miller, Samuel F. 50, 55, **61**
Milligan, Lambdin P. 51, **51,** 52
Minimum hours and wages 62-5, 70-1, 72, 73, 77, 78, 79, 81-3
Missouri Compromise 34, 35, 44, 47
Monetary power 56
Mooney, Tom 77, **86, 87,** 87
Moore v. *Dempsey* 71-2, **80-1**
Morgan, J. P. 60-1, **66**
Muller v. *Oregon* 63, 73
Munn v. *Illinois* 56-8, **58-9,** 80
Murphy, Frank 83, 86
Murrah, Alfred P. **127, 149**
Murray, Madalyn E. 109

NLRB v. *Jones & Laughlin Steel Corp.* 82, **94-5**
NRA 81, **90, 91**
Nazi saboteurs 88-9, **100-1**
Near, J. M. 69, 71
Nebbia v. *New York* 80, **88, 89**
New Deal 80-3, **90-1, 92, 93,** 113
Nixon, Richard M 111, **112,** 113, 128, 130, 141, 143
Norris v. *Alabama* 74
Northern Securities v. *U. S.* 60-1, **66, 67**

Ogden, Aaron **36,** 39
Oregon "bottle bill" 145, **145**

"Packing" the Court 56, 82-3, **92-3**
Patterson, Haywood **84-5**
Peckham, Rufus W. 62, 63
Perjury 77, 86, 87
Plessy v. *Ferguson* 60, **62-3,** 68, 97, 98, 100, 102, 106
Powell, Lewis F., Jr. 11, **112,** 128, 130, 136, 137, **140,** 143
Prayer, classroom 107-9, **110-11**
Price, Victoria 73
Prize Cases **48-9,** 49, 50
Public interest 38, 42, 57, 59, 67, 69, 80
Putzel, Henry, Jr. **122, 126,** 139

Quarles, Donald A. 92, **102**
Quirin, Richard 88, **100**

Railroads 40, 56-8, **59,** 61, **67,** 80-1
Randolph, John 26, **30**
Reapportionment 103, 105, 107, **108-9,** 110
Reconstruction 53, 55, 59
Reed, Stanley **52-3,** 83
Rehnquist, William H. 11, 123, 130, 137, 139, **141**
Religion: establishment of 107-10, 111; freedom of 83, 85-6, **96-7**
Reporter of Decisions 122, **122, 126,** 139
Republican Party 48
Republicans (Democrats, Jeffersonians) 21, 22, 24, 26, 27, 31
Reynolds v. *Sims* **110**
Roberts, Owen J. 80, **93**
Robinson, Aubrey E., Jr. 144
Rockart, John R. 114
Rodak, Michael, Jr. 122-3, **126**
Roe v. *Wade* 111, 113
Roosevelt, Franklin D. 12, 80, 81, 82, 83, 86, 88, 91, **92-3,** 100, 115, 128
Roosevelt, Theodore 60-1, **67,** 72
Rutledge, John 15, 20

St. Clair, James D. **112,** 141, 143
Schechter Poultry Corp. v. *U. S.* 81, **90,** 91
Schempp, Mr. and Mrs. Edward L. **109,** 110
Schenck, Charles T. 67, 69
Schools, public 85, 86, **96-7,** 97, 100, 102, **106-7,** 107-10, 108, 109, 122
Scott, Dred **42-3,** 44, **45,** 47
Scottsboro cases 73-4, **84-5**
Seal **4,** 125
Search and seizure 96-7
Sedition 21, 26, 76, 78
Segregation 59-60, **62-3,** 97, 100, 102-3, **106-7,** 122
"Separate-but-equal" doctrine 60, **62-3,** 97, 106
Separation of powers 141
Sherman Anti-Trust Act 58, 60-2, 67, 68, 134
"Sick Chicken Case" 81, **90-1**
Slavery 34-5, **34-5, 40-1,** 41, **42-3,** 44, **45,** 47-8, 53
Smith, Mrs. Charles D. (Linda Brown) 100, **106**
Socialist Party 67, 78
Solicitor General **52**
Spanish-American War 60
Stanbery, Henry **54**
Standard Oil 61, **68-9**
States' rights 28, 32, 35, 37
Stewart, Potter 11, 96, 107, 110, 111, 112, 128, 130, 134, 139, **140,** 141
Stone, Harlan Fiske 80, 81, 82, 83, 85, 86, **93,** 114, **116**
Story, Joseph 29, 41
Strong, William 56
Sumner, Charles **40**
Supreme Court, U. S.: as interpreter of Constitution 7, 10, 13, 26, 27, 113, 141, 143; criticism of 6, 12, 22, 24-6, 35, 37, 40, 41, 53, 80-2, 110-13, 138; reorganization plan (1937) 12, 82, 92
Supreme Court, U. S.: caseload **60-1,** 77, 122-3, 134, **146,** screening of cases 134, 136; customs and procedure: admission to its bar 123, 130, 140; conference 136, 137, 138; decisions **122,** 136-7; formalities 118, 122; opening of Court 127-8; opinions 137, 138-40; oral argument 130-3, 141, 143; schedule 126; term 122
Supreme Court, U. S.: early homes of: New York 15, **17;** Philadelphia 17, 20, **22-3;** Washington **24,** 29-30, 52, **53,** 81
Supreme Court, U. S.: personnel 122, **128;** barber **132;** cabinetmakers **132;** conference clerk **138;** curator **127;** information officer **132, 135,** 139; law clerks 134, 136, 137; legal officers (staff counsel) 138; messengers 137; officers of the Court 122, **127;** pages **120-1,** 126-7; physical therapist **135;** police 126, **133;** seamstress **135;** secretaries 137
Supreme Court Building **6-7;** architect **83,** 115; barber shop **132;** cafeteria 126; carpentry shop **132;** chambers 126, **130-1;** conference rooms: private **138-9,** public 11, **142;** cornerstone laying **83,** 115; Courtroom **114,** 116, bench **120-1,** 130; courtyard, inner **129;** dimensions 116; doors, bronze **117;** exercise room **135;** exhibits 126, **127;** Great Hall **118-9,** 143; gym 139; lamp standards **116;** libraries **124-5, 136-7,** 138; marble 116; model **82, 127;** pressroom **135,** 139; print shop 138; staircase **123;** visitors **114,** 115, **118-9,** 126, 128, **133**
Supreme Court Historical Society 5
Sutherland, George 74, 77, 79, **93**

Taft, William Howard 60, 64, 65, 77, 79, **82-3,** 115, 116, **146**
Tamm, Edward A. **149**
Taney, Roger B. **38,** 41-2, 43, **44,** 46, 47, 48, 50, 51, 57
Toth v. *Quarles* 92, **102, 103**
Tourgée, Albion **62**
Treason 22, 89, 92, 118
Truman, Harry S 120, 126
Trusts 58, 60-2, **66, 68-9**

U. S. v. *Darby Lumber Co.* 83
U. S. v. *Loew's, Inc.* 134
U. S. v. *Nixon* **112-3,** 113, 115, 126, 134, 140-3
U. S. v. *"The Spirit of '76"* 67, **76, 77**

Van Devanter, Willis J. 79, 83, **93**
Vinson, Fred M. **116,** 138
Voting 55, 103, 105, 107, 110

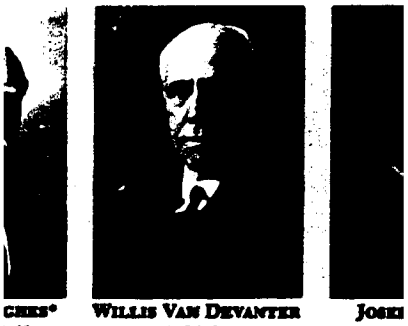
Waite, Morrison R. **52,** 56-8, **60-1,** 77
War power 57, 86
Ware v. *Hylton* 20
Warren, Earl 92, 97, 110, 143
Washington, George 9, 15, 16, 20, 21
Wayne, James M. 12, 48, 51, 55
Webster, Daniel 12, 13, 32, 39, 41
White, Byron R. 10, 11, 111, 111, 112, 113, 128, 130, 132, 136, 137, 139, **141**
White, Edward Douglass 62, 77
Wilkins, Robert R. 121
Wilson, James 15
Wilson, Woodrow 10, 12, 64, 77
Wives of Justices **142**
World War I 67, 76
World War II 86, 88-9, **98-101**

Yaco, Sonia **145**

PRINTED BY TAWCETT PRINTING CORPORATION, ROCKVILLE, MARYLAND

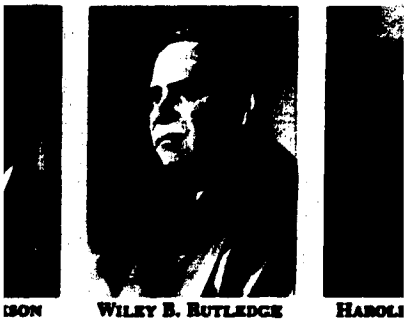
150

GEORGE SHIRAS, JR.
1892-1903



WILLIS VAN DEVANTER
1911-37

HARLAN FISKE STONE*
1925-46



WILEY B. RUTLEDGE
1943-49

BYRON R. WHITE
1962-

D ON PAGE 4.