



## THE SUPREME COURT HISTORICAL SOCIETY

# Quarterly

VOLUME XXXII

NUMBER 2, 2010

### JUSTICE JOHN PAUL STEVENS RETIRES FROM THE BENCH

On Monday, June 29, 2010, Justice John Paul Stevens sat in a formal session of Court for the last time as an active member of the Supreme Court of the United States. He announced on April 9, 2010 his intention to resign in a letter to the President. Justice Stevens wrote: "Having concluded that it would be in the best interests of the Court to have my successor appointed and confirmed well in advance of the commencement of the Court's Next Term, I shall retire from regular active service as an Associate Justice . . . effective the next day after the Court rises for the summer recess this year." His resignation had been anticipated for some time following unofficial comments he made and in light of the fact that he did not hire a full complement of clerks for the 2010 Term. The letter announcing his resignation preceded his 90<sup>th</sup> birthday by only 11 days.

John Paul Stevens was the senior Associate Justice of the Court at the time of his resignation. Indeed, he had served more than a decade longer than any of his other colleagues currently on the bench. He became the senior Associate Justice in 1994, beginning an unusually lengthy time in that position.

Justice Stevens was appointed to the Bench in 1975 by President Gerald Ford to fill the seat vacated by the retirement of William O. Douglas. A former antitrust lawyer from Chicago, Stevens was confirmed by the Senate just 19 days after his nomination. His confirmation hearings marked the end of the era when such proceedings were not televised. All subsequent hearings have been televised. When asked his criteria for selecting Stevens, President Ford replied that his goal was to nominate "the finest legal mind I could find."

Justice Stevens was raised in Chicago by an influential family that operated the Stevens Hotel. At the time, that hotel was the largest in the world, boasting 3,000 rooms.

Justice Stevens attended the University of Chicago and then the Northwestern University School of Law. As with many of his generation, his education was interrupted by service in the Navy during World War II. When speaking of

his military experience, Stevens is fond of reporting that he joined the Navy on Dec. 6, 1941. "I'm sure you know how the enemy responded the following day," he quips, alluding to the attack at Pearl Harbor that took place on December 7, 1941. Like his previous colleague Lewis F. Powell, Jr., Stevens worked as a code-breaker during the War. He earned a Bronze Star for that work.

Upon completion of law school, Stevens clerked for Justice Wiley B. Rutledge, Jr., after which he returned to Chicago to practice law, specializing in antitrust cases. While in private practice, he taught law at Northwestern University and the University of Chicago schools of law. He was appointed to the United States Court of Appeals for the Seventh Circuit in Chicago, in 1970 where he was serving at the time of his nomination to the Supreme Court of the United States.

He and his wife Maryan have maintained a home in Florida for some years, and Justice Stevens will spend most of his time there following his retirement. Like his previous colleagues, Retired Justices Sandra Day O'Connor and David H. Souter, he may perform some Circuit Court duties in retirement.

June 28, 2010 marked the last session of the Court for this Term, and was Justice Stevens' last day on the Bench.

*Continued on page 16*

Photo credit—Photo by Steve Petteway



**Justice John Paul Stevens retired shortly after his 90th birthday.**

## A Letter from the President



As I noted in my last letter to the membership, the Society has just completed its 35<sup>th</sup> year of operation. Since I highlighted many of the accomplishments of those years in that letter, I will resist the impulse to repeat them again except to say that these years have brought many noteworthy achievements, including publications and lectures and reenactments of landmark cases, in addition to educational training and outreach that has impacted thousands of teachers and students across the Nation.

All of this has been made possible because of your support and the dedication of Officers, Trustees, foundations and organizations that have had the vision and commitment to provide funding and expertise of the highest caliber. While looking through old issues of the *Quarterly*, I am reminded of the incredible contributions that have been made by sitting Justices of the Supreme Court, noted Supreme Court advocates and scholars, and many others who have given generously of their time to make possible our outstanding programs and publications that shed new light and insight on the history and activities of the venerable institution we serve.

Looking back on the year just ended, there are many wonderful accomplishments, many of which have been, or will be, detailed in this magazine. But I would like to focus on one of special significance which was accomplished over a period of several years. That is the construction of a magnificent gift shop on the ground floor of the Supreme Court Building itself. In recognition of the completion of this complex multi-year-task, a brief ceremony was held in October 2009 with Justice John Paul Stevens as the sponsor. He made brief remarks commenting on the beauty of the shop and thanked the Society for its contributions to educating the public about the Court. Chief Justice John G. Roberts, Jr. and Justice Sonia Sotomayor also attended. Officers and Trustees of the Society were joined by members of the Society's staff and representatives of the contractors who had designed and constructed the various elements of the space.

From the humble beginnings of a small desk located just inside the bronze doors of the Court, the shop evolved through several iterations, and in a number of locations, each of which was more sophisticated than its predecessor. None were constructed with an eye toward permanence, but in conjunction with the renovation of the Supreme Court Building

itself which commenced several years ago, a master plan was created that contemplated locating all commercial operations for the building within one quadrant of the ground floor.

Space was allocated for the shop and the Society embarked on designing an area that would be in keeping with the classical architecture and outstanding workmanship that was demonstrated in the original fabrication of the building. The design for the shop sought to capture and utilize many of the decorative details incorporated in the building itself and that would be in keeping with the magnificent architectural fabric of Cass Gilbert's original designs. Noted architect James McCrery was engaged for this daunting task.

In designing the space, Mr. McCrery and Julia Garza of his office toured the building, pored over drawings and photographs and conferred with Catherine Fitts, Curator of the Court, and the members of her staff, in an effort to create a space that was in perfect harmony with the building itself. The craftsmen, I think they can more aptly be referred to as artists, of Winchester Woodworking fabricated the elaborate and exquisite woodwork, and the result of their labors is truly breathtaking. Marble countertops echo the marbles used through the building itself and were created by Rugo Stone.

The complexities of renovation taking place in a working building were coordinated by the Marshal of the Court, Pamela Talkin, assisted by Deputy Marshal Richard Nelson. Mr. Nelson had principal responsibility for coordinating the project and he went to incredible lengths to facilitate the work while supervising simultaneously extensive renovation work in the building at large.

Of course, there would not have been a shop without the necessary funding. The Executive Committee determined early on that when the Court invested its trust in the Society to construct this shop, it also conferred a responsibility to build something reflective of its august surroundings. As gift shop sales only generate a small profit in any given year, most of the money had to come from somewhere else. Several generous benefactors stepped up to meet that need. First and foremost, was the Clark-Winchcole Foundation. The organization contributed just over half of the funds required. Society Vice President Vincent C. Burke, III chaired the Gift Shop Committee and pleaded our need to the Foundation on numerous

### The Supreme Court Historical Society

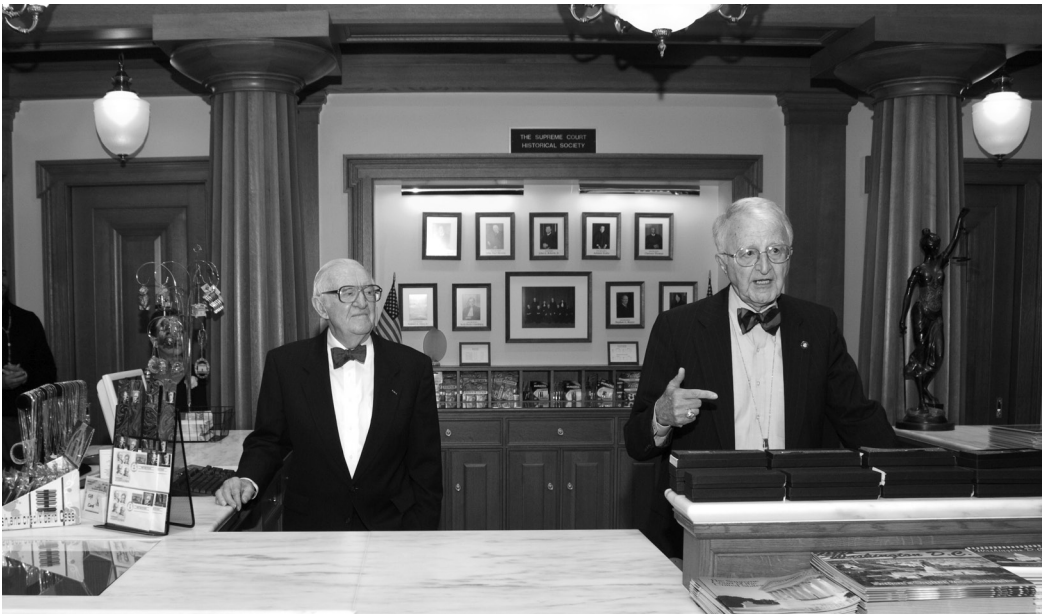
## Quarterly

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

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**Justice Stevens and Mr. Lancaster stand behind the counter in the new gift during the grand opening celebration.**

occasions. Another major contributor, The American Center for Law and Justice, was represented by Jay Sekulow. Mr. Sekulow is a Trustee of the Society and he and the Center have contributed to many of the Society's educational endeavors in addition to supporting this project. Additional major support was given by Peter Angelos, Society Chairman Emeritus Dwight Opperman, Vice Presidents Dorothy Goldman and Jerome Libin who also made substantial contributions to the project. In addition, Society Trustees Harlan Crow, Foster Friess, Leon Polsky, Agnes William, and Don Wright made contributions. Price Charities also donated funds in support.

The shop echoes the designs and decorative motifs found throughout the building. It is paneled in rich oak woodwork of great sophistication and beauty that echoes that found in the Conference Rooms and other parts of the Building. It is lit in part by several pendant chandeliers original to the building that had been discarded in modernization projects

over the years. Every aspect of the design does great credit to the building and the institution it serves. Its shelves are filled with books, photographs and other items that provide insight and educational material about the Court. Its construction provides a service to the public and is an accomplishment in which we can all take pride.

While my primary purpose was to speak of the shop, I cannot resist this opportunity to entreat you once again to continue your support of the Society. The numerous activities and programs we engage in cannot take place without your support. As I have before, I encourage you to make contributions whenever your situation allows, and to make comments and suggestions for improvement or additional activities. You are the life-blood of the organization and we need and welcome your participation.

*Ralph Lancaster*

**The gift shop design incorporates a coffered ceiling which brings to mind the elaborate treatments of the East and West Conference Rooms. The white oak paneling and cabinetry echoes architectural themes used in the conference rooms, the library and in Chambers. The white marble counter tops with grey and black veining is reminiscent of the marble used throughout the interior of the building.**



## UNVEILING OF THE REHNQUIST PORTRAIT BUST

The official portrait bust of the late Chief Justice William H. Rehnquist was unveiled in a ceremony held in the Great Hall of the Supreme Court Building on December 10, 2009. All nine members of the Court were present along with members of the Rehnquist family, judges from lower courts, and former Rehnquist clerks.

In opening remarks, Chief Justice Roberts observed that “[t]oday is an especially appropriate day for holding this ceremony. On December 10, 1971—38 years ago today—the Senate confirmed William Rehnquist as an Associate Justice. From that day forward, he devoted his great talents and energy to this Court.” Chief Justice Roberts clerked for then-Associate Justice William Rehnquist in the 1980 Term, and later in his career had the opportunity to appear before him often as an advocate prior to succeeding him as Chief Justice.

Speaking of the origins of displaying portrait busts of past Chief Justices, Roberts said that “[t]he tradition of commissioning of marble busts of the Chief Justices began in 1831, when Congress appropriated funds for the Supreme Court, under the leadership of Chief Justice Marshall, to commission a likeness of the Court’s first chief, John Jay. . . . Over the years, the Court continued to add busts to its Chamber through requests to Congress. Congress balked for a while, after the Civil War, in providing funds for a bust of Chief Justice Taney, due to the *Dred Scott* decision. But Congress eventually provided funding for the Taney bust in 1874, at the same time that Congress provided funds for the bust of Chief Justice Salmon Chase.

Sort of a Missouri Compromise of bust funding.”

Justice John Paul Stevens offered a brief tribute to his former colleague. Stevens had long served with Rehnquist. In describing Rehnquist’s interaction with his colleagues while serving as Chief Justice, Stevens said that Rehnquist was “a first among equals in every wonderful sense.”

James Duff, the Director of the Administrative Office of the US Courts served as the Administrative Assistant to Chief Justice Rehnquist for five years. Speaking of his former boss, Duff observed that Chief Justice Rehnquist would have enjoyed this special ceremony for two reasons: “First, he would

get to spend time with his family after it was over, and second, the speakers were given 5-minute time limits.” Continuing his characterization of Rehnquist, Duff said that “[h]e appreciated brevity. He would get right to the point himself—whether in oral argument or his administrative tasks. He was punctual and prepared. His self discipline enabled him to use his great energy and intellect in so many different ways.” To illustrate that point, Duff described the many administrative duties that are incumbent upon the Chief Justice. These include some 80 statutory responsibilities that must be fulfilled annually, along with duties that range beyond the Judiciary to encom-

pass service as Chancellor of the Smithsonian Institution. “And yet while Chief Justice, he wrote 4 critically acclaimed historical books. He enjoyed painting, playing tennis, and watching sports, especially college football, and music and sing-a-longs such as the annual one at the Fourth Circuit’s Conference.” (The Chief Justice traditionally is assigned circuit duties for the Fourth Circuit as that encompasses the area closest to Washington, DC.) Mr. Duff quoted Justice Byron White who served on the Court with Rehnquist for many years who once said of Rehnquist: “I have never ceased to marvel how one person could possibly carry out all the tasks given the Chief Justice and yet also decide cases and write opinions as the rest of us do. . . . The mystery of how he has done so has merely deepened as the business and size of the federal judiciary have so markedly increased over the years. . . . The Chief Justice reminds me of a highly conditioned cross between a quarter horse and a



The bust of Chief Justice Rehnquist was sculpted by Mark Fondersmith.

Collection of the Supreme Court of the United States

racing thoroughbred.”

His extraordinary career notwithstanding, Duff said that “. . . of all his accomplishments, I think he would rank his greatest one as raising a wonderful family. It was evident that they were most important to him. His beautiful wife, Nan, and his children, Janet, Jim, and Nancy, and grandchildren, always came first, which I believe is why he worked so quickly. After his passing, as the pallbearers carried his casket up these front steps to lay him in repose in this Great Hall, we saw grief on the faces of his colleagues on the Court—men and women of diverse backgrounds from Brooklyn to rural Georgia—and





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**James Rehnquist and his daughter, Dana, gaze up at the bust of the late Chief Justice. Justice Sotomayor is seen to the left of Mr. Rehnquist and Solicitor general Elena Kagan is behind Dana Rehnquist.**

it was clear—as it is today—that his family extended well beyond his bloodlines. So it is good to see his likeness here again—among family—and near the top of this Great Hall in this magnificent Court.”

James Rehnquist, the son of the late Chief Justice, described a little of his father’s early career in a two-man law firm in Arizona where business could sometimes be slow. He then spoke of his father’s appointment to the Justice Department and the family’s move to the Washington, DC area. While serving at the Department of Justice, two vacancies materialized on the Supreme Court and Rehnquist’s office was charged with reviewing possible nominees to fill these openings. James recalled that one day he came home from school and his father uncharacteristically called out to him to come downstairs where he was relaxing and having his customary snack of vanilla wafers and apple juice after his day of work. Rehnquist told James that Nixon had earlier in the day identified his two nominees for the vacancies on the Court. When James asked him who they were, Rehnquist replied that the first was a lawyer from Richmond named Lewis F. Powell, “and the other is me.” His astonished son said “What?” and his father responded, “Yeah, can you believe it?” James concluded that “the rest is history.”

The bust was unveiled by two of the Rehnquist grandchildren, Baird Rehnquist Spears and Dana Rehnquist. Prior to his death, Chief Justice Rehnquist had selected

a likeness that had been taken in clay by sculptor Mark Fondersmith as the basis for the sculpture. It was created in white marble and joins the busts of his fifteen predecessors. The sixteen busts are utilized in the Great Hall of the Supreme Court Building, with the earliest Chief Justices displayed nearest the front doors of the Building alternating from one side of the Hall to the other in order of service. When the Burger portrait bust was unveiled, Chief Justice Rehnquist presided over that ceremony and quipped that “I have noticed we are running out of room for busts,” and said he was a little concerned about where his would be displayed. His fears proved to be groundless. The Rehnquist bust now graces a niche just outside the Court Room, with the Burger bust in the correlating space across the Great Hall.

Chief Justice Roberts eloquently captured the emotions of the occasion. “This ceremony sets in stone something we all feel—the late Chief’s enduring presence here. Modest and unassuming, he has left a permanent impression on this institution, both as a great Justice and a great Chief Justice. Now, after 33 years on the bench, Chief Justice Rehnquist can take his place at a location of high honor in the Upper Great Hall, here at the Courtroom’s door. But we all know that he would care little about the honor of that location. Rather, he would point out, in his own pragmatic way, that the location provides a good vantage point for keeping an eye on us.”

## JOHN JAY AND GEORGE WASHINGTON'S VALEDICTORY (PART II)

By Carol Brier\*

*Editor's Note: The first part of this article was published in Quarterly Volume XXXII, No. 1, 2010. The text can also be found on the Society's website, along with the accompanying end notes for Parts I and II of the article.*

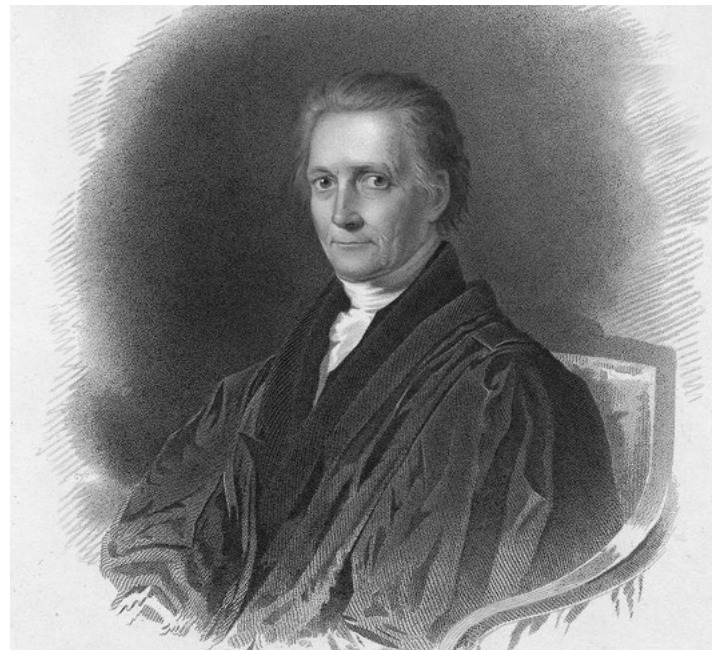
In October 1818, Mrs. Hamilton visited Jay at his Bedford farm. She mentioned that Mason had abandoned his biography of Hamilton because of health and had returned all the papers to her. She also brought up the subject of the Farewell Address and said to Jay that her husband had written the draft of the Address. Jay, in his letter to Judge Peters about the meeting, wrote that he stated to Mrs. Hamilton "The General [Hamilton] himself told me, that the President had sent him a draught. She replied that she had seen the President's letter to the General about it, and that in it he desired the General to make any *alterations* that he thought proper. . . . This certainly is very different from desiring him to compose one. In case the letter has been preserved it will speak for itself. They were at that time residing at places distant from each other, and, consequently their communications on the subject were doubtless epistolary. I am induced to mention Mrs. Hamilton's account to the President's letter because it affords additional evidence to confirm the statement contained in my answer to yours about the draught of the address."<sup>1</sup>

Later that year, Jay, through Judge Peters, permitted Bushrod Washington to copy his letter to Judge Peters. Bushrod Washington was a nephew of George Washington and his uncle's primary heir. He was also a Supreme Court Justice, having been appointed by John Adams. Justice Washington was aware of the ever-growing controversy. He had received some letters from Mrs. Hamilton stating her position and was interested in Jay's opinion about the controversy. Bushrod copied an extract from Jay's earlier summary and noted that Judge Peters had told him of Jay's concern about confidentiality. Justice Washington commented that Mrs. Hamilton had visited Mount Vernon a year before and borrowed certain of her husband's letters to Washington for the purpose of making copies. He told Jay that the subject of the Farewell Address was not discussed during her visit. Only later was he ". . . informed in Phila, by a friend, the authorship of that address was attributed to Genl H. in whispers by certain persons in N. York & Phil."<sup>2</sup>

This was not the first occasion on which Justice Washington loaned the president's papers to someone. In 1800, Bushrod Washington and Martha Washington desired to have a biography of George written by John Marshall. Marshall knew Washington well and was privy to many of the events that would certainly be in the five-volume work he ultimately wrote and published beginning in 1805. John Marshall's *Life of Washington* was the first biography of the former President. Justice Washington actually provided all of the president's papers to Marshall for his project. Marshall ultimately returned them.

Jay and Peters continued their correspondence. In No-

vember, 1820, Peters wrote of a new development in the authorship controversy. Peters had heard that Mrs. Hamilton had now loaned Hamilton's papers to Joseph Hopkinson so that he could write a biography of Alexander. Hopkinson was a federal district judge and noted trial and constitutional lawyer. Peters spoke to Hopkinson about attributing the Farewell Address to Hamilton but Peters did not wish to be put in the embarrassing position of refuting the allegation publicly. Hopkinson replied that he would do nothing to detract from Washington's reputation and legacy. It seems that the knowledge of the existence of Jay's letter was used wisely by Peters in his discussions with Hopkinson. Peters asked Jay about certain ambiguities in Jay's 1811 letter to him. Peters wanted to know how much of the Hamilton draft belonged to Washington and how much of Washington's Address could really be attributed to Hamilton. In reply, Jay wrote that he could state nothing new beyond what he had written to Peters in 1811, but he did clarify some facts of the meeting: "[t]he attention both of Col. Hamilton and myself was, in our Consultation on that Subject, confined to the Paper in which he had incorporated that address with his proposed corrections—We considered whether in this State it required any further amendments and nothing occurring to render the occurrences to the Draft itself, as sent by the President, necessary—it was not then read by either of us, nor by me at any Time. An idea that this confidential Reference might perhaps be disclosed, did not enter into my mind; and not having the least apprehension of unpleasant Consequences, there was nothing to excite my attention to care or Precaution respecting them—Whether the President adopted all or only some of the proposed Corrections, or added others, are questions



Bureau of Engraving and Printing

**As the legal heir to Mount Vernon, Justice Bushrod Washington also inherited the papers of his uncle, George Washington.**



which my memory at this late Day (sic) does not enable me to answer—nor do I recollect having read the printed address, with an Eye to those circumstances—“<sup>3</sup>

One thing is certain, Jay and Hamilton never spoke publicly about the drafting of the Address and neither claimed that anyone other than Washington was the author. Both also respected Washington’s desire for confidentiality. Jay was beginning to recognize the extent of the controversy and its deleterious effects and his concern for confidentiality was to be strained even further by new and unexpected developments. Jay remained constant that the Farewell Address was the work of Washington with his “Sentiments.”

The controversy entered the national arena in 1825. James A. Hamilton, on behalf of his mother, asked Rufus King for the package of letters King had had in his custody for almost twenty years. King refused. The result was a suit in Chancery brought by Mrs. Hamilton. She sought to force return of the documents, even as King sailed to London to take up his post as Minister Plenipotentiary. The debate was taken up in the editorial pages of some newspapers. It so alarmed Bushrod Washington that he sought the advice of Chief Justice John Marshall. Marshall replied that “It is extremely fortunate that Mr. Jay was privy to the whole transaction and that he has lived long enough to explain it.”<sup>4</sup>

Marshall speculated that should Mrs. Hamilton succeed in obtaining the letters and they be made public, he had no doubt that they would coincide with Jay’s account. He then went on to reason “I am unwilling to believe that General Hamilton can have preserved these papers for the purpose to which his family now wishes to apply them. Mrs. Hamilton and his son appear to be more to blame than I had supposed, since they must know that the address was written by General Washington and revised by his friends.”<sup>5</sup> It should be remembered that Marshall had enjoyed free access to all of Washington’s papers when he wrote his biography of the President. He had seen nothing in them to make him question the president’s authorship

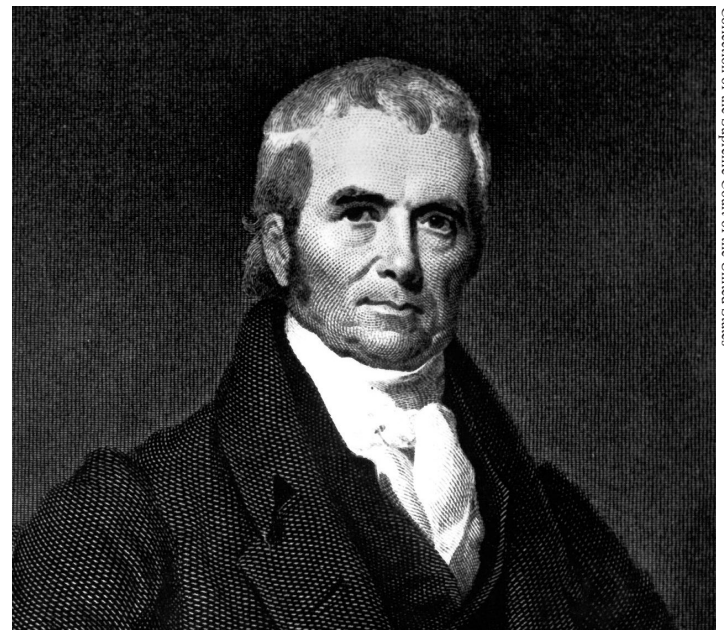
A flurry of letters ensued. Rufus King wrote to his son Charles about the lawsuit and asked him to write to Justice Washington. Washington once again sought the advice of Marshall, expressing regret that it had come to court. He went on to say that supporters of President Washington would not oppose the publication of the letters since Jay had already given an explanation. “I firmly believe Mr. Jay’s statement to be correct.”<sup>6</sup> Both Marshall and Justice Washington were convinced that other than the president’s letter requesting Hamilton’s advice on the address there was nothing in the Washington papers which suggested Hamilton’s actual authorship.

The court case brought the debate to national attention. The Historical Society of Pennsylvania through its president William Rawle, wrote to David Claypoole, the original publisher of the Farewell Address. He asked Claypoole to recall his meeting with the President. Rawle reported that “[a]fter relating these facts Mr. C produced to me the original and I saw with reverence and delight a small quarto book containing about thirty pages all in the handwriting of this great

man.”<sup>7</sup> Rawle further stated that he was very familiar with the handwriting of both Washington and Hamilton. There was no question in his mind that the draft had been written in Washington’s own hand. Rawle’s report and a Certification by Claypoole were later made part of the Memoirs of the Historical Society of Pennsylvania.

The Society did dig deeper in early 1826 when an Ad Hoc Committee was formed to clarify the authorship of the Farewell Address. Letters were sent to Richard Peters, Bushrod Washington, John Marshall and John Jay. Bushrod Washington replied: “. . . I beg leave to state that the papers bequeathed to me, so far as I have examined them, afford no ground whatever for attributing the composition of that paper to any other than the person whose signature it bears.”<sup>8</sup> Washington further stated that he had no reason to believe any other person had been responsible for the writing. John Marshall, stated simply: “I have seen nothing there to induce a suspicion that it was written by any other than the avowed author.”<sup>9</sup> Judge Peters, who still retained the long letter written to him by Jay, informed the Society: “I cannot deliver his letters to any one without his permission;”<sup>10</sup> but added “[i]t is a strange pursuit in Hamilton’s family, thus to give trouble to everybody who regards the fame of either the General or Col H. himself. If he had written the Address, it is perfidy to betray the confidence reposed in him. But as he did not, it is wrong in his family to assert his having done it. In either case his descendants would gain no reputation, but our nation would suffer a serious injury by having the fascinating name of *Washington* taken from the creed of every friend to his country.”<sup>11</sup>

Jay succinctly replied to the committee’s request for information: “[t]o this request propriety requires from me a candid and explicit answer.”<sup>12</sup> Jay said that he first learned of the controversy from Judge Peters in 1811 and in the same year he had summarized his memory of the events in a letter



Chief Justice John Marshall reviewed the disputed papers in connection with his work on a biography of George Washington.

addressed to Peters. He also wrote that he was now granting permission explicitly to Peters to reveal the contents of that letter but added “. . . that should any copies be taken, it is my desire that they may be copies of the *whole*, and not merely of *parts of the letter*.”<sup>13</sup> Thus, Jay had finally given consent to the publication of his letter. Peters wrote to John Jay that members of the historical society’s committee were “. . . uneasy and indignant”<sup>14</sup> about the controversy. He stated again that he was absolutely convinced that the address found in Hamilton’s papers was simply a “fair copy” of Washington’s writing.

The ad hoc committee made one last inquiry when they wrote to Col. Nicholas Fish, the surviving executor of Hamilton’s will, in April 1826. Fish replied in May that he had nothing in his possession to indicate that the original draft was written by anyone other than Washington.

On October 5, 1826 the *New York American*, published Jay’s 1811 letter to Judge Richard Peters in its entirety. A statement from the paper followed the article:

NEW YORK AMERICAN

THURSDAY EVENING, OCTOBER 5, 1826

The letter of Mr. Jay, which we will publish this day, on the subject of Washington’s Farewell Address, will be read with great interest. It is marked with the characteristic force and elegance of that gentleman’s style, and in its facts and reasoning, is conclusive.<sup>15</sup>

This was high praise indeed from a newspaper with opposing political views, and further confirmed the extent of Jay’s reputation and credibility. It is likely that other papers also published the letter, making it available to a larger readership. Publication of the letter effectively put an end to the national debate over the authorship of the Farewell Address.

When Rufus King returned from England in 1826, he was not well physically or mentally, dying less than a year later. He moved to put his affairs in order and shortly after returning home, he sent James Hamilton all of the letters he had held in custody for more than twenty years. Undoubtedly King felt that the publication of Jay’s letter relieved him of his long-standing obligation as custodian of the Hamilton papers, particularly as he thought that Jay’s letter proved that there was no longer any reason for the papers to be withheld from the Hamilton family.<sup>16</sup> James Hamilton received the letters which were added to a larger collection of Col. Hamilton’s papers. Ultimately, Mrs. Hamilton sold the entire collection to the government. They are now in the Library of Congress.

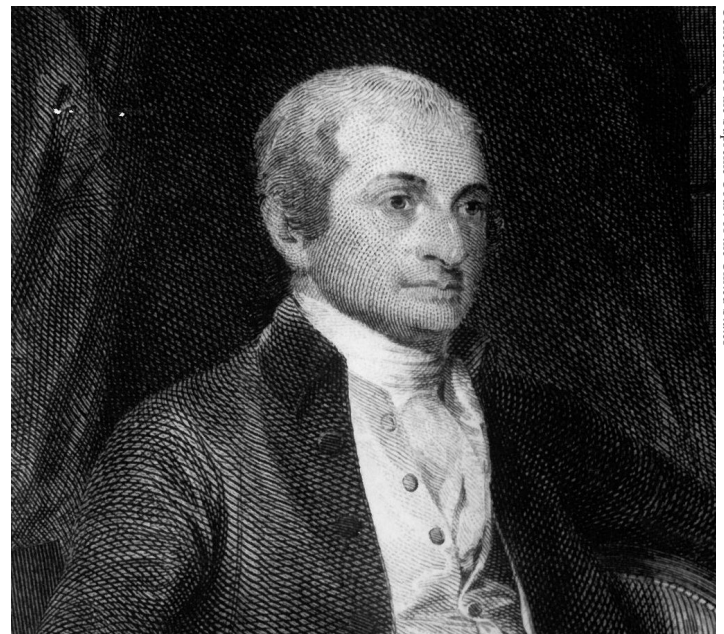
The Pennsylvania Historical Society published its findings in 1826 and included copies of its letters to John Jay, Chief Justice Marshall, Justice Washington, Judge Peters and Col. Fish, along with their responses. The report also included Claypoole’s Certification, and John Jay’s all-important letter of March 29, 1811 to Richard Peters. The members of the Committee believed that the answers they had received “. . . must remove all doubts on the subject. The facts stated in Mr. Jay’s letter to Judge Peters well account for the *mistake* which has accompanied this question. The whole address appears to have been copied by General Hamilton, whose affectionate attachment to the President prevented him from thinking any

trouble on his account too great, and this copy having been we know not how, returned to his possession, was probably the cause of the opinion that he was the original author.”<sup>17</sup> The members of the Committee believed their final report on the controversy to be conclusive and put an end to researching the matter.

The publication of Jay’s letter brought the national controversy over the authorship to a close. Later allegations and articles that attempted to raise doubts proved to be of no substance and had no real impact on those conclusions. The final chapter on this subject was the publication of Washington’s original draft, with all its notations, by James Lenox in 1850. Notwithstanding these reports and opinions of witnesses and experts, Mrs. Hamilton never wavered in her belief that her husband had written the Farewell Address. She remained implacable in this position until she died in 1854 at the age of 97, including in her Will a final statement of her belief of Hamilton’s authorship of the Address.

John Jay never faltered in his admiration and respect for Washington and never once doubted who had written the Farewell Address. Judge Peters had used the existence of Jay’s 1811 letter to him to defend Washington’s position on numerous occasions in this strange controversy. Even his detractors never doubted John Jay’s character, integrity and credibility and his letter was a major factor in the final determination of the controversy over authorship. Skeptics, however, formed opinions based on political beliefs and rumors and then came to unsubstantiated conclusions. Throughout the controversy, Jay remained circumspect, lawyerly and patient, and in the end he was responsible for the emergence of the facts in this strange episode of American history.

In modern times, when everyone understands that presidents ordinarily do not write their speeches or even



Collection of the Supreme Court of the United States

**The publication of a letter written by Retired Chief Justice John Jay brought the controversy over the authorship of the document to a close.**



semi-personal letters, this controversy may seem petty. But in earlier times there were different sensibilities. Bushrod Washington, John Marshall, the Hamilton family, and John Jay all obviously believed that the authorship of the address was of the gravest importance. Mrs. Hamilton thought that some proof of her husband's authorship would augment his reputation. Her opponents obviously believed that George Washington's reputation would be diminished. While the controversy may now seem to be minor, it illustrates how an earlier era viewed the importance of original authorship.

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<sup>1/</sup> John Jay to Richard Peters, 25 January, 1819, The New York Public Library.

<sup>2/</sup> Bushrod Washington to Charles King, 6 October, 1825, Paltsits.

<sup>3/</sup> John Jay to Richard Peters, 26 December, 1820, Columbia University.

<sup>4/</sup> John Marshall to Bushrod Washington, 7 July, 1825, Paltsits, p.282.

<sup>5/</sup> Ibid, p.283

<sup>6/</sup> John Marshall to Bushrod Washington, 3 October, 1825, Paltsits, p. 285.

<sup>7/</sup> *Report of William Rawle on Conversation with David Claypoole*, December 16, 1825, Paltsits, p.288.

<sup>8/</sup> Bush. Washington to Committee of Historical Society of Pennsylvania, 23 February, 1826, *Memoirs of the Historical Society of Pennsylvania*, Edward Armstrong, ed., (McCarty and Davis, Philadelphia, PA, 1826), Vol.1, P.244.

<sup>9/</sup> J.Marshall to Historical Society of Pennsylvania, 22 February, 1826, *Memoirs of the Historical Society of Pennsylvania*, Vol.1, p. 245.

<sup>10/</sup> Richard Peters to Historical Society of Pennsylvania, 19 February, 1826, *Memoirs of the Historical Society of Pennsylvania*, Vol.1, p. 247.

<sup>11/</sup> Ibid.

<sup>12/</sup> John Jay to Committee of Historical Society of Pennsylvania, 21 February, 1826, Columbia University.

<sup>13/</sup> Ibid.

<sup>14/</sup> Richard Peters to John Jay, 21 February, 1826, Columbia University.

<sup>15/</sup> *New-York American*, 5, October, 1826.

<sup>16/</sup> Paltsits, p. 88.

<sup>17/</sup> Report of the Committee, *Memoirs of the Historical Society of Pennsylvania*, Vol.1 pp. 242-243.

*\* Carol Brier is the author of several previous articles on John Jay. She is a member of the Board of Trustees of the Friends of John Jay Homestead where she is currently working on an archival project and writing other articles about Jay.*

## CLERKS' CORNER: JOHN PAUL STEVENS RECEIVES A CLERKSHIP

By John Q. Barrett\*

In May 1947, a Northwestern University law professor, Willard Pedrick, visited Washington, D.C., the Supreme Court of the United States and, while there, an old friend and former law professor, Associate Justice Wiley B. Rutledge. During their conversation, Rutledge mentioned that he was hoping that appropriations legislation would pass soon that would allow him to hire, for the coming Court Term, a second law clerk.

Pedrick replied that John Stevens, a top Northwestern law student who soon would graduate, would make an excellent clerk. Pedrick added that their mutual friend Bill Wirtz, another Northwestern professor, knew Stevens well. Rutledge said he was interested in learning more, and that Pedrick should have Wirtz write a letter to Rutledge about Stevens.

When Pedrick returned to Chicago, he told Wirtz of this conversation. Within days, Wirtz—W. Willard Wirtz, who later served as U.S. Secretary of Labor under Presidents Kennedy and Johnson, wrote back to Rutledge:

“Let me simply say that I consider Stevens to be one of the two most outstanding students whom I have ever worked with. The other is a classmate of his who is here with him now. The members of the faculty who were here during the war [unlike Wirtz and, for that matter, Stevens] add Francis Allen to this group, and are then almost unanimous in their feeling that these are the three most promising men ever to attend this school. I know that this must sound like exaggerated praise, and yet it is literally true.”

“Stevens has the quickest, and at the same time most balanced, mind I have ever seen at work in a classroom. I have worked with him, too, in connection with two or three law review projects. The man is just as solid as he is brilliant. Beyond all this he has a personality which makes it a pure delight to work with him. I suppose that he is undoubtedly the most admired, and at the same time, the best liked man in school.”

“I guess it would be foolish for me to try to say more. I could add a number of details but they would all be of so much the same character that you would begin to apply a general discount rate. I can't tell you how much I hope that your plans will work out so that you can take advantage of Stevens's abilities and that he may, at the same time, enjoy what I should consider the finest single opportunity that any man could possibly have.”

In July 1947, President Truman signed the appropriations law authorizing Supreme Court justices, to employ second law clerks. Rutledge communicated this to Wirtz and asked

him to offer the job to Stevens. Stevens promptly wrote the Justice to accept, adding that he would not finish law school until September. Rutledge wrote back, telling Stevens he would be expected to stay as a law clerk for two years, and that he should take a week of vacation in September before moving to Washington to begin his clerkship.

When Stevens wrote back, he thanked Justice Rutledge for his consideration in encouraging Stevens to take a week off

between law school and clerking. Stevens also pushed back a little bit against the Justice's preference that Stevens clerk for two years:

“If you decide that you would like to have me stay on for a second year, I shall be happy to do so. Frankly, my personal preference would be to stay for only one year, but this preference is by no means strong enough to cause me to reconsider my decision. I definitely want to accept the position whether it be for one year or two, and you may be sure that I will do my utmost to do the kind of work that will persuade you to keep me for two.”

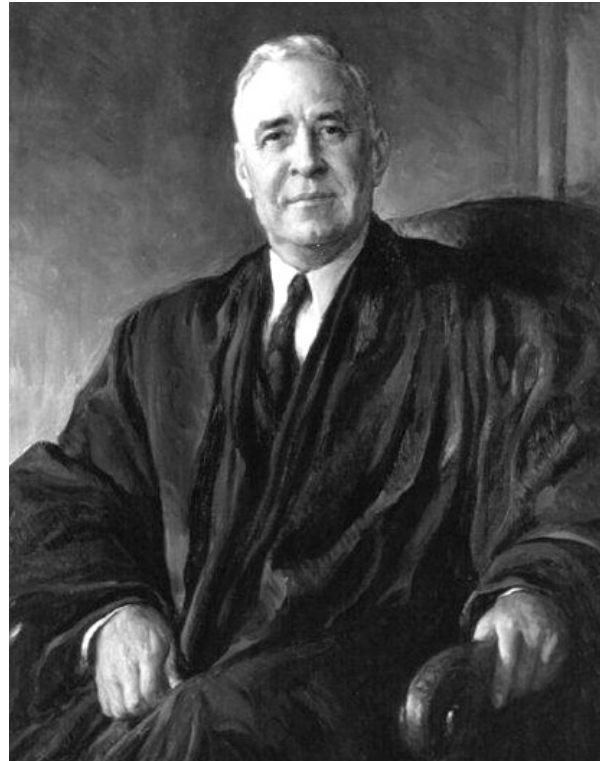
John Stevens did, as a Rutledge law clerk, exactly that kind of excellent work. Stevens also persuaded the Justice to let him go after only one year. In summer 1948, Stevens finished his clerkship. He explored the possibility of entering law teaching but ultimately decided to enter law practice. In September 1948, he became associated with a Chicago law firm.

Justice Rutledge missed law clerk Stevens. In December 1948, for example, Rutledge wrote to Bill Wirtz that “the way John Stevens panned out makes me wonder if your own recommendation even at long distance isn't better than my own judgment on personal interview.” Indeed, in a letter to another confidante, Rutledge wrote at this time that “John Stevens, although taken sight unseen, turned out to be one of my best clerks. I now think I made a mistake in not keeping him for a second year, that is, in leaving the choice to him whether he would return [to Chicago] and plunge into his more active professional and political life when he did.”

In spring 1949, Justice Rutledge described Stevens to a third friend as one of his “ablest clerks” and lamented again that Stevens was “with me only one year....”

In spring 1949, Justice Rutledge described Stevens to a third friend as one of his “ablest clerks” and lamented again that Stevens was “with me only one year....”

*\* John Q. Barrett is a professor at St. John's University School of Law in New York. He is also the Elizabeth S. Lenna Fellow at the Robert H. Jackson Center, Inc. in Jamestown, New York. This article was originally written and made available to subscribers to his Robert H. Jackson list.*





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*Justice Stevens retires—continued from page 1*

At the beginning of the session, Chief Justice Roberts read a statement reporting the death the previous day of Martin D. Ginsburg, husband of Justice Ruth Bader Ginsburg. The Chief Justice’s statement noted that Mr. Ginsburg was an accomplished lawyer and law professor known for his sharp wit and gourmet cooking.

After the opinions had been announced and other business conducted, Chief Justice Roberts bid farewell to Justice Stevens on behalf of himself and his colleagues, by reading a short statement. “For the past thirty-four years, this Court has drawn strength from your presence. . . . You have alloyed genuine collegiality with independent judgment” observed Roberts. “Your decision to retire saddens each of us in distinct ways. We will miss your wisdom, your perceptive insights and vast life experience, your unaffected decency and your resolute commitment to justice.” The letter was signed “affectionately” by all of the current Justices and the two retired Justices. Many of the spectators that day wore bowties, a tribute to the trademark neckwear worn by Justice Stevens throughout his tenure on the Bench. At the conclusion of his remarks, the Chief Justice said they would allow time for Justice Stevens to make a rebuttal.

Stevens then read from a short letter that started “Dear Colleagues.” The text of the letter read:

“Collegiality and independence characterize our common endeavor. I thank you for our kind words. Far

more importantly, Maryan and I thank each of you and each of your spouses—present and departed—for your warm and enduring friendship.

It has been an honor and a privilege to share custodial responsibility for a great institution with the eight of you and with ten of your predecessors. I have enjoyed working with each of you and with every member of the Supreme Court work force that has always taken such excellent care of the Justices. If I have overstayed my welcome, it is because this is such a unique and wonderful job. I wish you all the best.”



(left to right) President Gerald Ford sits with Chief Justice Warren Burger and Justice John Paul Stevens on the day of Stevens’ investiture in 1976.

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