



Historical Society of the District of Columbia Circuit

Newsletter #29

September 2016

JUST AHEAD:

[A Courthouse Reunion for Law Clerks and Their Judges](#)

Current and former law clerks and their judges -- judges who have sat on the District of Columbia Circuit Courts over the years -- and Historical Society members are invited to a reception featuring Paul D. Clement, former Solicitor General of the United States, partner at Bancroft PLLC, and once a D.C. Circuit law clerk himself. Part of the Society's Law Clerk Initiative, a project supported actively by Judge Brett Kavanaugh and Judge Ellen Segal Huvelle, this will be the Society's third reception honoring law clerks.

Date: November 3; Time: 5 - 7 p.m.; Place: Courthouse Atrium.



Scene from the 2015 reception.

TWO NEW ORAL HISTORIES RELEASED

[Billy Martin](#)

You may wonder why the Society had Carl Stern take an oral history of former Yankee manager Billy Martin, but if you read Carl's [article](#) on the Society's website, you'll discover that the Billy Martin he interviewed was a Washington lawyer who has since moved to Baltimore.

Well known, like the former Yankee manager, Billy Martin has the moniker of "celebrity lawyer" or, as *USA Today* put it, a lawyer with "unique skills for assisting people in big trouble."

Martin's mentors included Georgetown basketball coach John Thompson and renowned lawyer Johnnie Cochran. But these were not the men who started Martin off on a legal career. That man was a Pittsburgh lawyer who ran into Martin's car and was so impressed with the dressing down he received that he advised Martin to go to law school. Read [Billy Martin's oral history](#).



Billy Martin

[Warren Juggins](#)

[Warren Juggins](#) served as a librarian in the Prettyman Courthouse Library during the periods 1952-83 and 1989-99. Following Mr. Juggins's death in 2014, the Society invited Laurice Juggins, his wife of 55 years, to record her recollections of his life and service to the Courts. Mrs. Juggins recalls, among several interesting stories, some of the challenges her husband faced during the period the Bar Association of the District of Columbia, which was segregated until 1958, owned and operated the library.

Laurice Juggins was interviewed by Gennine Hagar, Chief U.S. Probation Officer

FOCUSING IN: HIGHLIGHTS FROM HARRY MCPHERSON'S ORAL HISTORY

After taking Harry McPherson's oral history in fourteen sessions, John Vanderstar wrote a delightful summary of McPherson's life. A career in law wasn't McPherson's first choice. Instead, he started towards a masters degree in English literature at Columbia where he helped write the script for a Christmas show. It didn't look like they had any good singers until a Juilliard student named Leontyne Price showed up for rehearsals.

Nonetheless, McPherson switched to law and, upon graduation from the University of Texas Law School in 1956, landed a job in Washington with the State's Senator, Lyndon Johnson. You can probably guess the rest. Lyndon Johnson proved to be of more help to McPherson's career as a Washington lawyer than Leontyne Price. Read Vanderstar's full [article](#) as well as Harry McPherson's [oral history](#).



Harry McPherson

MEET THE SOCIETY'S TWO HISTORIANS

Maeva Marcus, appointed historian of the D.C. Circuit Historical Society in 1990, directs the Institute for Constitutional History at the New York Historical Society and is research professor at the George Washington University Law School. Previously, she directed and edited *The Documentary History of the Supreme Court of the United States, 1789-1800*, a project sponsored by the Supreme Court of the United States and the Supreme Court Historical Society that produced eight volumes. For four years she was Visiting Professor of Law at Georgetown University Law Center, where she taught a variety of legal and constitutional history courses to faculty and students. Among her many publications are *Truman and the Steel*



Maeva Marcus



Dan Ernst

(photo courtesy of Victoria Sulewski)

Seizure Case; Origins of the Federal Judiciary: Essays on the Judiciary Act of 1789; "Louis D. Brandeis and the Laboratories of Democracy" in *Federalism and the Judicial Mind*; "Judicial Review in the Early Republic" in *Launching the "Extended Republic."* With Mark Tushnet, Melvin Urofsky, and Keith Whittington, Maeva edits "Cambridge Studies on the American Constitution." with the Cambridge University Press. This year she was appointed general editor of the Oliver Wendell Holmes Devise by the Librarian of Congress. She previously served a two-year term as President of the American Society for Legal History.

[Dan Ernst](#) may have just become one of the Society's two co-Historians, but he has long participated in Society activities – a Board member for six years and an active participant on the Program Committee. A member of the Georgetown University Law Center faculty since 1988, Dan is the recipient of a Fulbright, taken in New Zealand, a John Simon Guggenheim Memorial Fellowship, and a Law and Public Affairs Fellowship at Princeton. His first book, *Lawyers against Labor*, which received the Littleton-Griswold Prize of the American Historical Association, was a history of the American Anti-Boycott Association. After publishing many articles, Dan published *Tocqueville's Nightmare* in 2014, which shows how American judges and politicians settled on court-like procedures as the best way to constrain government officials while allowing them to perform needed tasks. With such interests, Dan has had several occasions to write about the history of the D.C. Circuit. He devoted a chapter in *Lawyers against Labor* to *Buck's Stove and Range Co v. AFL*, wrote two articles on Harold Stephens, and contributed a biographical sketch of Thurman Arnold to a special issue of the *American Lawyer*.

NEWLY DISPLAYED IN THE COURTHOUSE: THE PORTRAIT OF CIRCUIT JUDGE CONSTANTINE JOSEPH SMYTH



Constantine Joseph Smyth

[Constantine Joseph \("C.J."\) Smyth](#), born in Ireland in 1859, emigrated at age eleven to live with an uncle in New York. As a teenager, Smyth joined the tide of Irish immigrants following the railroads westward. Landing in Nebraska, he initially folded newspapers and slept under a desk at the *Omaha Herald*, attending college by day. After graduating, he read law by night while working with the Union Pacific Railroad. Passing the bar in 1885, Smyth followed a steep upward trajectory from private practice to become Attorney General of Nebraska, where he distinguished himself as a trust-buster and enemy of corruption. He then served as Special Assistant to the U.S. Attorney General for four years, after which President Wilson nominated him to the D.C. Circuit in 1917. On the D.C. Circuit, he was notable for his dissents and for writing the opinion in tension with his trust-busting roots that upheld baseball's antitrust exemption. Judge Smyth died in 1924, his Nebraska funeral reportedly attended by over one thousand people.

IN MEMORIAM



Former Chief Judge Abner J. Mikva

The Society remembers and pays tribute to former Chief Judge Abner J. Mikva, who passed away on July 4, 2016, having served on the U.S. Court of Appeals for the District of Columbia Circuit from 1979 to 1994 and as Chief Judge for the last four of those years. Mikva was one of those rare persons who served in all three branches of the federal government -- as Congressman from Illinois, Appeals Court Judge, and White House Counsel. In the oral history he gave to the Society, Judge Mikva touched on the important role of the judicial branch in the United States:

"First of all let me say that the only way our system has worked as effectively as it has is because we stumbled into this independent judiciary. You can't have the kind of constitutional system that we have without an independent judiciary, it just can't work. Too many times in our own history it's been the judges that have kept the other two branches from trumping the constitutional norms and expectations that we want to live up to. Watergate is a classic example, but the times the court strikes down the excesses of Congress are other examples. Other countries have tried to emulate the constitutional system similar to ours without an independent judiciary and it comes a cropper." [Interview 9 of 9, May 19, 1999, page 383.](#)