HISTORY OF NEW JERSEY LAW SCHOOL

The judicial department comes home in its effects to every man's heart. It passes on his property, his reputation, his life, his all."—Chief Justice Marshall.

It was in furtherance of Chief Justice Marshall's words, that the New Jersey Law School was organized in 1908 to aid in building a strong foundation of the judicial department. Up to this date, the State of New Jersey boasted many worthy lawyers, eminent judges and fine exponents of the law, but it lacked the training ground—a law school.

The first announcement of the opening of a New Jersey law school was published in the Upsala College Bulletin of January 1908, which read in part, as follows:

"In order to meet the need of law students in New Jersey, the President of Upsala College has had under advisement for some time, plans for the opening of a Department of Law to be known as the New Jersey Law School.

"In furtherance of this plan he has availed himself of the services of Mr. Richard D. Corrier, B.A. Yale 1888, and New York Law School, LL.B. 1902; and Mr. Percival G. Barnard, A.B. Tufts '96 and LL.B. Harvard Law School, 1904."

Shortly thereafter, a change of plans made it expedient to incorporate the new school, with its own officers, independent of any local institution. Mr. Corrier and Mr. Barnard then asked the late Dean Charles M. Mason to become associated with them. New Jersey was fortunate in that possessed forward looking, intelligent, and public-spirited citizens such as the three men united to further one purpose—the formation of New Jersey Law School.

The school was incorporated under the name "University of Newark," and has continuously operated under the same charter, except that the certificate was amended by changing the name to "New Jersey Law School," since it was felt, so long as the activities of the institution were confined to instruction in law, the former name was too ambitious.

The school opened October 5, 1908, and held its first classes on the fourth floor of the Prudential Insurance Company on Broad Street in Newark. As the classes grew larger and the enrollment increased, a large class room was procured in the Wood Building, now existing, on Market Street. The offices of the school remained in the Prudential Building until December 1908.

The enrollment continued to increase necessitating still another move in the same year. A three-story house, the former home of Newark's mayor, The Honorable Robert Piddie, was the next selection. The school moved there in December 1908 and continued to occupy the building, which was located at 33 East Park Street, until June 15, 1930. During these years, the building was remodeled and title was also acquired to adjoining buildings. With these additions and the construction of a new Gothic building on land at the rear of newly acquired premises, sufficient accommodations were provided for 1,550 students, which was our enrollment in 1927—an enrollment that at that time established the school as the second largest law school in the country.

In 1928 the Ballantine Brewery on Rector Street was purchased and pre-law department of New Jersey Law School was moved into a portion of this building. In 1929 the Park Street property was purchased by the Public Service Corporation. The following year the Law School moved to the completed Ballantine property on Rector Street, where it has remained up to the present.

In May 1909, the State Board of Bar Examiners officially recognized the Law School as a school of "established reputation" and permitted students to count their time spent at school as a part of the necessary clerkship. In 1912, the Legislature of New Jersey passed an act requiring all schools and colleges not organized for at least twenty-five years prior to the passage of the act to apply for permission to grant degrees. New Jersey Law School made such application and received permission to grant the LL.B. degree 1912. Thirteen years later the school was granted permission to present the LL.M. degree. The right was confirmed in 1925. The school was first registered with the New York Board of Regents in 1922, and since then has been governed in its granting of degrees by the rules and regulations of that body, as well as those of the New Jersey State Board of Education.

In 1913 the New Jersey Law School course was extended from two to three years. Following the recommendation of the American Bar Association, the first step toward placing the School on a college-entrance basis was taken. Prior to that time, the entrance requirements had been the satisfactory completion of an approved high school course. In October 1922, a Pre-Legal course was offered for the first time. Plans for taking the next logical steps, which was to make the pre-law college work compulsory, were immediately begun. Accordingly the New Jersey Law School catalogue of March 1, 1925 contained the announcement that students entering September 1927 as candidates for
the LL.B. degree must present evidence of having completed one year of work in an approved college or the equivalent. Students entering September 1929 as candidates for the LL.M. degree will be required to present evidence of having satisfactorily completed two years of study in an approved college, or the equivalent. This step was taken voluntarily on our part simply to bring New Jersey Law School in line with the requirements of the American Bar Association and the New Jersey State Bar Association.

In April 1930 Dana College was incorporated. Its name was selected as a fitting gesture to the famous newspaper, John Cotton Dana. The entire good-will and plant of the Pre-Legal department of the New Jersey Law School was transferred to the College. At the same time the school organized and took under its direction, the Seth Boyden School of Business. Dana College has already received the right to grant the A.B. degree. It has, in that short space of time, received endowments to date, somewhat more than $75,000.

In May 1933, the Law School, the Business School and Dana College merged whereby the three schools would operate jointly as non-profit making institutions. The purpose of such an arrangement was to facilitate the creation of a central unit of education in Newark—an all Newark University. Changes were made in the charters of the Law School and in the College so that the schools could comply with the strict requirements of the law in New Jersey governing the operation of non-profit making institutions. There has recently been a reorganization of the Board of Trustees of Dana College. Richard D. Carrier resigned as the President of the college and accepted the position of Treasurer. The present President of Dana College is Dr. Frank Kingdon, the forward looking, liberal thinking, former minister.

On October 25, 1935 final steps toward the completion of the proposed merger of Dana College, Seth Boyden School of Business, New Jersey Law School, Newark University, and Mercer Beasley Law School into Newark University were taken when representatives of the various schools met at the Down Town Club and signed the articles of agreement.

The new University consists of three separate schools: a school of arts and sciences, a school of commerce, and a school of law. It is expected that the University will confer the degrees of Bachelor of Arts, Bachelor of Science and Business Administration, Bachelor of Laws and Master of Laws.

A statement released to the press gave the following officers of the University of Newark: Dr. Frank Kingdon, President of the University; Franklin Conklin, President of the Board of Trustees; Vice-President, Milton P. Unger, and Arthur F. Egger; Asso-
HARRIS, TYREE AND SORG

(With apologies to Herman Kreibich)

Harris, Tyree and Song:
A trio to cheer up a morgue,
They're the pride of our staff,
And you learn while you laugh
With Harris, Tyree and Song.

Harris, Tyree and Song:
They're famous from Kona to Cork,
Where strict obituary
Is "learn it verbatim."
That's Harris, not Tyree nor Sorg.

Harris, Tyree and Song:
Renowned at the Duke of York.
If your girl wants to go
To the Equity Pleading Show
See Tyree, not Harris nor Sorg.

Harris, Tyree and Song:
They clear up the densest fog.
When reasons are missing;
Who smiles and says: "Listen!"
Not Harris nor Tyree, but Sorg.

Harris, Tyree and Song:
They'd even bring smiles to your dog.
For teaching the law
There should have been more
Like Harris, Tyree and Sorg.
Faculty
RISE AND DEVELOPMENT OF THE UNITED STATES SUPREME COURT

By
S. ALVIN BAHR '37

With the great flood of New Deal Legislation and the extensive litigation based upon it that has arisen in the past few months, the U. S. Supreme Court has suddenly been brought from its obscurity, by way of newspaper headlines and editorials, into nationwide and even world-wide prominence. As a result of this publicity, a great deal of agitation has arisen in favor of constitutional amendments to curtail and limit the powers of this body. Much of this has been based on flagrant misconceptions or absolute ignorance of, and much on deliberate misinterpretations of, the nature, the history, and the powers of that august institution. Such widespread popularity after years of normal, quiet existence, has led the ordinary citizen to become either misinformed, misled in his beliefs, or more firmly entrenched in those beliefs to which he had previously erroneously subscribed, regarding our highest judicial tribunal. It would therefore, be most presumptuous at this time, to remove the veil of mist that has surrounded the Supreme Court and bring to light its history, its true nature, and its general trends.

In 1787, when that great delegation met at Philadelphia to draw up our Constitution and set up our government, they determined to launch on the troubled waters of checks and balances and democratic government, a ship which was to be known as the Supreme Court, whose function it would be to patrol these waters, and act as a pacifier and neutralizer of what they feared would otherwise become uncontrollable, opposing natural forces—the executive and legislative branches of the government. With this determination firmly rooted, the delegation diligently set about their task and after weeks of deliberation and debate, constructed the Articles of our Federal Constitution, what they believed was a ship which would answer their purpose. We are all familiar with the content of this article which in effect provides for a Supreme Court, and "such inferior courts as Congress may from time to time establish," for the appointment of judges, the original jurisdiction of the court, and for the determination of the appellate jurisdiction by Congress.

A brief survey of the text of this article makes self-evident the inadequacy of its provisions and quite clearly indicates that all that the framers had accomplished was the construction of the hull of their ship, which, when launched, would serve no greater purpose than to be buffeted about, helpless and uncontrolled. It needed a rudder, sails and a favorable wind to set it in motion. The first three were provided by the Judiciary Act of 1789. Immediately upon the convening of our first Congress, they set about to complete the unended work of the framers and by the aforementioned act, determined the composition of the court and set up by its famous section twenty-five, the appellate jurisdiction of that tribunal. But even this was insufficient. A vessel, even though complete in every detail of construction, and launched on the open sea, cannot steer unless there is a favorable wind to move it in its way and an able captain to guide its course and its destiny. And it was not for some ten years to come, before this necessary prearrangement was obtained to set the craft into motion for a continuous, though not uneventful journey of some one hundred and forty years.

The status of the Court at this early post-natal period is well characterized by the words of the constitutional delegate Randolph, when he referred to it as a "holy place for despotic politicians" and the words of Hamilton, who asserted that it was the weakest of the three governmental divisions, having "neither force nor will." The history of the first ten years of the court is of little importance. The work done during these years was very little. At the first session, there were no cases on the docket and throughout this whole decade, only six cases were decided in which opinions of constitutional law were involved. On the whole, the number of cases pending at the end of each year was so small that the work was not able to be done. The only importance before the court averaged approximately a half dozen per year. The only importance that might be attached to this period is the lack of development of any judicial precedent and the difficulty in obtaining a chief justice who would be willing to view the whole. The little vessel was the child of sufficient importance to give it life and direction. The little vessel was the office of sufficient importance to give it time and effort. The little vessel was the office of sufficient importance to give it time and effort. The little vessel was the office of sufficient importance to give it time and effort. The little vessel was the office of sufficient importance to give it time and effort.
America in 1795, he was elected as governor of New York State and resigned his position as chief justice. A position on the Supreme Court was not even considered incompatibile with the holding of another office at the same time, even service to a State stood higher than did service in the highest judicial capacity to a national government. William Cushing, next appointed, and though confirmed unanimously by the Senate, served but one week, resigning before holding a single session of court. Oliver Ellsworth was next appointed in 1796. Three years later he was sent by President Adams as Commissioner to France and on his return in 1803, resigned his position as chief justice. Though captivated, more or less, throughout this period, it became clear that the craft could not move until a favorable wind or another stimulus could be obtained.

Of this whole period, the only case of legal and historical importance to be decided, was that of Chisholm v. Georgia. Yet, this decision was not devoid of all effect, for as Pellen in his American Statutes series, said, "Three great facts were determined once for all; the dignity of the court was vindicated from encroachment by the federal executive, and legislative departments; its jurisdiction was established over state governments; and Jay announced and determined that foreign policy of the U. S. which has been accepted, and followed from that day in this." Because of the paucity of opinions rendered, it is difficult to say whether or not the tendency of the court was toward a liberal or strict construction of the constitution, and we must therefore consider this early period purely from the light of a physical developmental era.

Little did anyone realize at that time, or even after the "midnight" appointment of John Marshall as Chief Justice, the tremendous influence that the Supreme Court would have in shaping the destiny of our government and in interpreting our constitution and the powers that would become its own in the relatively near future. With the coming of Marshall to the Supreme bench, the little craft got its first real captain, and his famous decision in Marbury v. Madison gave the little sailing vessel its first forward push. With sails unfurled the gust of wind characterized by this outstanding decision, set the craft assiduously with a vigorous start and set it in motion, to continue undisturbed except for slight periodic variations in the force of the opposing wave motions, until this very day. It was the coming of Marshall and his decisions that ushered in the first truly important era in the development of our court, an era, marked by a loose and liberal construction of the terms of the Constitution. For thirty-four years, Marshall kept the craft moving expeditiously making its influence felt in fixing the federal law, in construing the constitution, in consolidating by his opinions the Union, and by increasing the confidence in the institution.

Marshall was sailing uncharted seas—bound by no legal precedents, unfettered by the bonds of stare decisis, he had but to be logical and consistent. Under his direction, his crew worked fearlessly with a resulting rise in the prestige and power of the court. In fact, so high did the influence of his court rise, that during his term 1106 opinions were filed, the yearly number growing from 11 cases when Marshall rose to the bench, to an average of more than 50 per year, before his term ended. The compelling force under the leadership of Marshall, was the enlargement, through decisions of the court, of the powers of the federal government. It was with this in view that he laid down in his famous decision, the right of the Supreme Court to pass on the constitutionality of federal legislation, thus usurping a right never granted by the constitution, nor intended by the framers and setting up the Supreme Court in effect as the third and Supreme legislative body of our government, a precedent as novel as the very form of our government at that time, and by later decisions, enlarged and expanded the powers of the federal government through his interpretations of the constitution and its provisions. In fact, so bold became the trend toward extending and strengthening the federal government by the Supreme Court decisions, that Jefferson, with honest fears remarked, "The Judiciary of the U. S. in the subtle corps of sapere aude, constantly working underground to undermine the foundation of our confederate fabric. They are constantly construing our constitution from a coordination of a general and a special government, in a general and supreme one alone."

It may be well here to review the far reaching effects that these innovations of John Marshall have had upon the tenor and activities of our highest judicial tribunal. In the first place, the right to pass upon the constitutionality of congressional acts, had become more or less accepted as a natural function of the court, although, sporadic attacks were made on this power. But far more important were the cases in which the court sustained the acts of congress, for it was through the courts approval of such legislation that the national government assumed to extend and expand into vast powers the authority conferred upon it by the Constitution. Because of this, former president Calvin Coolidge, referred to it as the "staple instrument of the discovery of laws", and lawyers for years referred to our court as the "court of ultimate jurisdiction". It was further under this power that the Supreme Court became a legislative body which through its interpretations enlarged, expanded, or contracted and amended our constitution. Five examples of use of this power shine out among the rest and may be briefly considered at this point.

The commerce clause of the constitution reads, "Congress shall have the power—to regulate commerce—among the several states." At the outset this meant and could have meant only the transportation of commodities between states by land and sea. But with the growth of the nation and the increase of business, the commerce clause was broadened and made to include the transportation of goods within the nation as well. This meant that the Supreme Court had to interpret this clause in order to determine what commerce included. The Court has done this, often establishing limits on the states and in some cases holding that the federal government has the right to regulate certain activities. In general, the Court has been sympathetic to the federal government's efforts to regulate commerce, recognizing the need for a cohesive national economy. However, there have been exceptions, such as in the case of United States v. E. C. Knight Co., where the Court held that the federal government did not have the power to regulate the manufacture and sale of sugar. In this way, the Commerce Clause has been used to strike a balance between federal and state authority, and to protect the rights of individuals and businesses. Overall, the Commerce Clause has played a significant role in shaping the development of the U.S. economy and the role of the federal government in regulating it.
not merely "traffic" in commodities, between citizens of states, but that it included all "intercourse" between them as well. Under this substitution of words, the federal government has regulated American industry. It has controlled the transmission of ideas, through telephone, telegraph and wireless, the broadcasting of entertainment, advertisement, and propaganda over radio, the transmission of power over electric wires and cul through pipelines, the travel of individuals, transportation of merchandise, navigation, conduct of correspondence schools, etc. Though this amendment of the word commerce, the Federal government has been vested with a police power, never conferred or even vaguely anticipated by the framers, under which police power, under guise of regulating commerce, it has prohibited white slavery, adulteration of goods, letters, kidnaping, prevented fugitive felons and witnesses from traveling in inter-state commerce, etc.

The word regulate has been stretched and "exclusively" appended to it so that today the Supreme Court has given Congress the power to exclusively regulate inter-state intercourse; and regulate has been construed to mean prohibit, create, operate, control and subsidize. Under such amendment, Congress has passed laws regulating the compensation, benefits, and conditions of workers; has created, operated and controlled highways and bridges, canals and railroads; has subsidized ships and airplanes; has fixed telephone, telegraph and railroad rates; prohibited rebates; compelled filing of uniform reports; consolidated railroads; restrained unreasonable trusts; abadoned labor disputes; and suppressed strikes and boycotts all because of a possible effect on commerce.

Now the Constitution gives Congress power to coin money. The framers intended this power to mean to stamp pieces of metal. Yet it was ruled that this power included the right to print paper money and compel its acceptance as legal tender.

The Constitution gives the Federal Government the power to establish post offices and post roads. Yet these innocent phrases have been construed to mean regulate and suppress", and under this new interpretation the Congress has assumed a police power to regulate advertising, suppress fraudulent business, prohibit the dissemination of immoral literature, and prevent the circulation of radical propaganda in times of national emergency.

Again, the Constitution gives Congress the power to "lay and collect taxes", a power originally intended to create a means of raising revenue. Yet this power, simple on its face, has been construed to mean create, regulate, or even prohibit and destroy, and today the power to tax has in effect become the power to destroy. Even corporations, intimate creatures of the state, far beyond the wildest dreams of the founders of our government, have by interpretations of the court been considered "persons" in order to bring them under the protective wing of the Constitution, and corporate grants, charters, and franchises as such contracts as are protected by its contract clause. It should be understood, that this material has been presented not with a feeling of decision or criticism, but rather as an exposition of the unforeseen development of the federal powers and the possibility of continuing such a developmental policy with a view toward the changing order and needs and demands of the people and the government.

The force of progress of the little vessel and the popularity of its captain were not to continue unimpaired. The Supreme Court was now already accepted for its worth and continued so, enlarging and expanding the federal powers and imbedding itself firmly among American institutions until the controls were placed into the hands of Chief Justice Taney. With him came the second era in our developmental history, a period of reaction to the policies of his predecessor, a period of strict construction of the Constitution and by the decision rendered in the Dred Scott Case, Taney set up a fierce storm checking the progress of the vessel he was guiding, bringing it into popular disfavor, splitting the already troubled waters of a political struggle over the organization of new territory into a north and south and plunging us finally into a bleeding, destructive tempest—the CIVIL WAR. Could it have been anticipated, could the framers have dreamed, could the people ever imagine the far reaching effect that such a "weak and powerless" institution would have not only on the political but also on the social and economic life of our country? It seems almost incredible that from such a weak and ineffective court so powerful an institution would rise— an institution whose influence is felt by every citizen in whatever capacity he may serve.

Though viewed with popular disfavor, the attitude of prominent individuals cannot be overlooked and can be in general summed up by the words of Abraham Lincoln, who said in the course of one of his debates with Douglas, "We believe as much as Judge Douglas (perhaps more) in obedience to and respect for the judicial department of government. We think its decisions on constitutional questions when fairly settled should control, not only the particular cases decided, but the general policy of the country, subject to be disturbed only by amendments to the Constitution as provided by that instrument itself. But we think the Dred Scott decision is erroneous."

It was many years before the court was able to retrieve its reputation. Many have looked with chagrin at the period during which Taney held the controls. But a careful glance at the facts might vindicate his strict constructionism and close adherence to the letter of the constitution. When Taney was appointed to the Supreme bench, the court was nearly a half century old and its powers and jurisdiction were well fixed, and American Constitutional jurisprudence had been to a large extent developed. It
did not fall to his lot, like Marshall, to make law. He was bound by a set of decisions, and by customs already established and somewhat expanded by his famous predecessor. He could but judiciously follow what had been set before him, and cling to the basic law of the land.

After Taney's death, while the court was still suffering from the lack of a satisfactory measure of public confidence, another decision was rendered which hurled the court once again into the abyss of public disfavor. This time it was the decision in the legal tender cases in 1869. In 1866, Congress provided for a reduction in the number of justices of the Supreme Court in order to deprive President Johnson of the opportunity to make appointments to fill certain vacancies. After that danger had passed and Grant became president, the number of justices was increased to nine. At this very time, the court was considering the case of Hepburn v. Griswold, involving the validity of the legal tender act. The decision by a court of seven was handed down declaring the acts unconstitutional. At the very same time, President Grant had filled the two vacancies and ordered a rehearing of the case with a final decision in favor of the constitutionality of the act. Though all parties acted bona fide, yet it was a bad move and delayed the progress of the Supreme Court for years to come.

Outside of this blur on the record, the terms of Chase and his successor Waite were marked by efforts to delimit the powers of the federal government under the commerce clause, by upholding the right of a state to build and maintain a bridge over a navigable river under the power to the state to exercise concurrent jurisdiction, by holding insurance not to be a part of interstate commerce, by giving a state the right to exclude foreign corporations, and permitting a state to fix rates for railroad transportation of freight and passengers.

Outside of the Income Tax cases which again brought the court into public notice, and better assault, it occupied itself rather quietly and unobserved with the development of its power and that of the federal government through its interpretations of the constitutional provisions. With the end of Waite's leadership, began another period of more liberal and loose interpretation which accounts for the tremendous increase of federal powers previously outlined at some length. This quiet and smooth sailing might have continued to this day were it not for the advent of the New Deal. With a minority of liberal-minded justices on the bench, the present trend of the court is difficult to determine in view of its decisions in the cases of the N.R.A., A.A.A., and T.V.A. It seems to be sitting on the fence swaying between liberalism and conservatism, but tending perhaps in the direction of the latter.

All through its history, the court has been predominantly conservative. Through all its years of sailing, the vessel has been buffeted between political fashions and maneuvers, between strong chief justices and strong presidents. It has faced thousands of problems, has dealt with difficult situations and has managed to maintain its integrity throughout. It has weathered many storms, has passed from strict constructionism to liberalism, from increasing federal powers to enhancing states' rights, and today though its crew is composed of several liberals, the same trait craft, seemingly unperturbed by the technical, social, and economic progress surrounding it, undaunted by the modern liners that pass it by or the airplanes that soar over its head, plies its course peacefully through the troubled and shifting waters of a changing world, of agitation, of social revolution, of the demands of the people—blown by the winds of conservatism and strict adherence to the constitution, guided by a 1787 constitution—beheld for a goal—we know not where.