



## ***ADVANCE SHEET – ISSUE 94***

### **A MESSAGE FROM PRESIDENT OF THE BOARD GEORGE W. LIEBMANN, ESQUIRE**

It has been customary for a subdued fund-raising appeal to accompany the annual dues notice. In the past, the proceeds of member and Board contributions have been just about sufficient to offset the deficits arising from the Library's lecture series and social events, including reimbursement of speakers' travel expenses and the receptions following lectures. We have endeavored to avoid using either appearance fee revenues or dues for such purposes, and intend to continue doing so.

The popularity of our lecture series has led us to seek to enlarge the number of events. Neither the law schools nor the Bar Associations make a serious effort to contribute to the general education of lawyers about either the traditions of their profession or the historical background of current events. Our Lecture Series has included several appearances by our 'regulars,' Professor James O'Hara of Loyola on Supreme Court biographies, Marion Elizabeth Rodgers on aspects of the career of H.L. Mencken and Professor Jonathan White of Christopher Newport University on aspects of the history of the Civil War, but we have also offered a wide variety of other speakers, including four Federal Court of Appeals judges, Andre Davis of the Fourth Circuit, Jeffrey Sutton of the Sixth Circuit, Diane Wood of the Seventh Circuit and Alex Kozinski of the Ninth Circuit; two federal district judges, J. Frederick Motz of Maryland and Reggie Walton of the District of Columbia; state court judges including Mary Ellen Barbera, Robert Bell and Lynne Battaglia of Maryland and Richard Neely of West Virginia; and elected officials including the late Governor William Donald Schaefer, Senate President Thomas V. Mike Miller and former State's Attorney Gregg Bernstein. We have offered speeches on financial problems by journalist Martin Mayer and former Mercantile Bank president H. Furlong Baldwin; discussions of land use by Professors William Fischel of Dartmouth, Robert Nelson of the University of Maryland, College Park, Garrett Power of the University of Maryland Law School and Richard Briffault of the Columbia Law School; talks on Judge Learned Hand by Professor Constance Jordan of Claremont, on Justice Louis Brandeis by the late Bennett Boskey, Professor Melvin Urofsky and Professor Jeffrey Rosen, and on Justice Thurgood Marshall by Professor Larry Gibson; reflections on Baltimore history by Gil Sandler, Antero Pietila,

Stan Haynes, Freeman Hrabowski, Professor Shawn Peters of the University of Wisconsin, artist Robert Hieronimus and cartoonist Kevin KAL Kallagher; talks on 'recovered memory' by Dr. Paul Mc Hugh; on jurisprudence by Professors Robert George of Princeton and William Reynolds of the Maryland Law School; on capital punishment by Professor John Bessler of the University of Baltimore; on evidence problems by Washington lawyers Jacob Stein and Robert Bennett and by Stephen Mercer and Jonathan Lenzner; on civil rights history by Professors Randall Kennedy of Harvard, Dennis Halpin of Virginia Tech, former State Archivist Edward Papenfuse, and David Margolick of the New York Times; on college athletics by William Kirwan and Taylor Branch; on Luther Martin by Will Kauffman and on Charles Carroll of Carrollton by Bradley Birzer.

We have also sponsored periodic observances of Black History Month; memorial tributes to William L. Marbury, H. Vernon Eney, Roszel C. Thomsen, Reuben Oppenheimer, Simon Sobeloff, Harry Cole, and Charles Dorsey, and criminal law and family law appreciation events, as well as framing and displaying a notable collection of courtroom drawings throughout the Mitchell Courthouse replacing much interior signage in it, and refurbishing several of the former telephone booths for use as meeting places.

The Library has also issued three commemorative publications on *Ex Parte Merryman*, *Brady v. Maryland*, and the 150th Anniversary of the Maryland Constitution of 1867 and is assisting in the publication of *Republican Press at a Democratic Convention* edited by John Connolly, one of its Board members

Several events are planned for early 2019, including a talk by Jonathan White on Civil War ironclad ships on February 6, one on race and rights in ante-bellum America by Professor Martha Jones on March 13, and a presentation on biodiversity by prominent environmentalist Thomas Lovejoy, former director of the World Wildlife Fund on April 10. Chicago labor lawyer and author Thomas Geoghagen will speak on private sector labor law from a union perspective in May.

In dedicating a new building for the New York County Lawyers' Association in 1930, Judge Benjamin Cardozo of the New York Court of Appeals, as he then was, observed:

"This...has been built and is now opened in the faith that this great conglomerate bar of ours, sodden and inert at times by reason of that very weight which might make it so irresistible a power for good, will yet be stirred in all its depths by the ferment of high thoughts and fine ideals, if once the leaven of fraternity shall vitalize the mass. Here in this home it will be given to us all to feel ourselves a part of an immemorial succession, to feel the pride and the poetry of keeping the succession true, and the shame and taunt when it is ravished and disgraced. Who will forfeit the privilege of crossing the threshold of the dwelling house, an equal among equals? Who will deface and deflower the family inheritance when once he feels it to be his inheritance—when he counts as his own the

memories and traditions that seem even as I speak, to be taking on a new form, to have become visible and incarnate in this hall resplendent with their presence?”

Several of our visiting speakers from other cities have remarked on the diversity and collegiality of the participants at our social occasions, undivided as between large and small firms, federal and state courts, or by race, gender or ethnic background. In the age of Cohen and Avenatti, Judge Cardozo’s ideal for an institution like ours may seem anachronistic, but we invite those who share it to contribute to our Lecture Fund.

George W. Liebmann

## **INSIGHT INTO THE MARYLAND CONSTITUTION**

I do not want to worry you, to think that my last name is McCarthy rather than Bennett, but I have to know – “Are you now, or have you ever been in the past a member of ... the State Bar of Maryland? If the answer is yes, have I got a book for you - *Republican Press At A Democratic Convention: Reports Of the 1867 Maryland Constitutional Convention By The Baltimore American And Commercial Advertiser* with Annotations and Commentary by John J. Connolly.

As a Maryland lawyer there are two documents that you cannot know enough about, one being the Constitution of the United States and the other the Constitution of the State of Maryland. That said, how invaluable is a work that sets forth a substantial amount of information concerning the adoption of one of these documents.

On October 30 of this year, the Honorable Jeffrey Stuart Sutton of the United States Court of Appeals for the Sixth Circuit came to the Bar Library to speak on his book *51 Imperfect Solutions: States And The Making Of American Constitutional Law*. A description of the book is set forth on the inside cover:

“When we think of constitutional law, we invariably think of the United States Supreme Court and the federal court system. Yet much of our constitutional law is not made at the federal level. In *51 Imperfect Solutions*, U.S. Court of Appeals Judge Jeffrey S. Sutton argues that American Constitutional Law should account for the role of the state courts and state constitutions, together with the federal courts and federal constitution, in protecting individual liberties.

If there is a central conviction of the book, it’s that an underappreciation of state constitutional law has hurt state and federal law and has undermined the appropriate balance between state and federal courts in protecting individual liberty.”

In order to more fully utilize the Maryland Constitution, might it not be appropriate to use all means at your disposal to grasp that which it sets forth, to garner a fuller understanding of it and the opportunities it affords for advancing the causes of your client?

Perhaps an indication of the growing appreciation of the importance of the Maryland Constitution was evidenced on the night of Judge Sutton's lecture by the attendance of several members of the Maryland Court of Appeals. Perhaps their being here meant nothing. But then again, perhaps it means it might be a smart thing to pick up your copy of *Republican Press At A Democratic Convention: Reports Of the 1867 Maryland Constitutional Convention By The Baltimore American And Commercial Advertiser*. This amazing and comprehensive volume of over 800 pages is available at the Bar Library for \$50, a fraction of what is currently paid not just for law books, but for supplements to those books. I suggest, to stay ahead of the curve, that you order your copy today. Stop by or place your order by phone 410-727-0280 or by e-mail at [jwbennett@barlib.org](mailto:jwbennett@barlib.org).

## **THE GREATEST GENERATION**

The recent passing of President George Herbert Walker Bush reminded me, for whatever reason, of an encounter that I had with another member of "The Greatest Generation" a number of years ago, the Honorable Joseph I. Pines.

Judge Joseph Pines, born February 16, 1922 was appointed to the Supreme Bench of Baltimore City by Governor Harry Hughes in 1980. He would retire from the Circuit Court of Baltimore City in 1992 but would continue to hear cases as a visiting judge until 2001.

I got to know Judge Pines fairly well as a result of his service on the Bar Library Board of Directors from 1970 until his death in 2009. At the time of his passing, Judge Joseph H. H. Kaplan stated "He had a very even-tempered demeanor and was always very fair. I was the administrative judge for a lot of the years he was on the bench, and I never heard one complaint about his mistreating someone." That was the Judge Pines I knew, an old fashioned gentleman, a nice man.

Well, most people do not like to talk about their fears, or in the case of many guys that I know, how they are anything but the personification of courage, but, for the second newsletter in a row I must point out that I do not like anything about flying. The time is probably about twenty years ago and the location is the Lexington Street door of the Mitchell Courthouse. I am waiting for then President of the Board H. Mark Stichel, who I am driving to the airport with for a flight to Kansas City where we are meeting then

Bar Librarian Miss Kai-Yun Chiu at a library convention. It was the end of the day and Judge Pines was heading home, when, being who he was, he stopped to say hello and ask me how I was. I answered o.k., but was about to take a flight and really did not like to fly. His right to the point reply was “Buck up.” Wow, was that really Judge Pines I thought? He gave me a smile, a pat on the shoulder, and continued up the hill.

A number of years later, when Judge Pines passed on, four days after his wife Marcia, I read Mr. Rasmussen’s obituary in The Sun, which included the following: “During WWII, he enlisted in the Army Air Corps and served as a navigator and radio operator aboard B-24 bombers in the Pacific.” Just like my own father who landed on balmy beach after balmy beach in the Pacific in the early to mid-1940’s, if you heard about what they had done, what they had been through, it was not going to be from them. They were a very special group of people. It is incumbent that in order to insure that what they did and who they were is not lost, we do our best in all regards to emulate how these men and women led their lives. We could certainly do a lot worse than try and live up to the standards set by “The Greatest Generation.”

Joseph W. Bennett

## **BOOKS! - GUESS WHAT? – WE’VE GOT THEM**

All of you are probably thinking that the old librarian has finally gone over the edge letting everyone know that the Bar LIBRARY has books. I suppose that with the way libraries are going today, with seemingly everything gravitating to an online presence, it might be news that a library still has books. This, however, is not what I mean. Although the Bar Library has a great many books (including a large number that are relevant and still UNAVAILABLE online), and yes, access to a very large number of Westlaw databases, the books I am referring to are histories, biographies and other works related to the Library’s Lecture Series. These are books written by nationally known judges, lawyers and scholars who have spoken at the Bar Library. A number of the works have been signed by the authors.

The Library bookstore has books for just about everyone. Want to get something for that Civil War buff? We have it. How about someone interested in legal history? We have it. Is your friend or family member interested in the Civil Rights Movement? You guessed it, we have it. Below is a list of the books the Library has for sale. Stop by, do a little research and take advantage of two bargains at the same time – your Library membership and the amazing deals found at the Library’s bookstore. Order may also be placed by phone 410-727-0280 or by e-mail to [jwbennett@barlib.org](mailto:jwbennett@barlib.org).

Brady v. Maryland: A Fiftieth Anniversary Commemoration	\$20.00
Ex Parte Merryman: Two Commemorations	\$15.00
Emancipation – The Union Army ... (Signed By Author)	\$35.00
Abraham Lincoln & Treason In The Civil War (Signed By Author) (Hardcover)	\$35.00
Abraham Lincoln & Treason In The Civil War (Signed By Author) (Softcover)	\$20.00
Lincoln on Law, Leadership, and Life (Signed By Author)	\$12.50
The Making of Africa America	\$25.00
Louis D. Brandeis	\$35.00
Baltimore & The Nineteenth of April 1861	\$15.00
Reason And Imagination: The Selected Correspondence of Learned Hand	\$35.00
Mencken: The Days Trilogy	\$30.00
Mencken's Prejudices Debunked	\$20.00
Odessa: Architecture – Monuments	\$35.00
Prohibition in Maryland: A Collection of Documents	\$15.00
Telemachus	\$20.00
Daggers Drawn: 35 Years of KAL Cartoons in The Economist	\$35.00
The Fall Of The House Of Speyer	\$35.00
Art of Cross-Examination	\$95.00
Ancient Law	\$75.00
Military Law and Precedents	\$75.00
The Order of the Coif	\$95.00
The Sprit of the Common Law and other Writings	\$150.00
Great American Law Reviews (3 volume set)	\$300.00
Blackstone's Commentaries on the Laws of England	\$500.00
Failure to Flourish	\$30.00
Louis D. Brandeis: American Prophet	\$20.00
American Constitutional History: A Brief Introduction	\$30.00
I'm Not Really Guilty	\$25.00
The Secret Life of Lady Liberty	\$20.00
Holding Fast To Dreams	\$25.00
The Promise And The Dream	\$30.00
The Ghosts Of Johns Hopkins (Signed By Author)	\$20.00

## BAR LIBRARY LECTURE SERIES

As a follow up to Mr. Liebmann's remarks concerning the events that have been held here at the Library, in particular the Library's Lecture Series, I thought I would provide some details about upcoming lectures. Traditionally, the Bar Library holds programs in the Spring and Fall, cognizant of the fact that at any particular time during the Summer half of Baltimore is "down the ocean" and aware that during the Winter nothing can produce snow like the Library scheduling an event. Well, when you have the opportunity of a return engagement by your good friend Professor Jonathan White of Christopher Newport University you take your chances, so on February 6 the Library will host "Our Little Monitor: The Greatest Invention of the Civil War." The following is from Professor White's book, which was published this year.

"On the afternoon of March 8, 1862, the Confederate ironclad ram *Virginia*, built upon the burned out hulk of the steam screw frigate *Merrimack*, crawled slowly into Hampton Roads to challenge the Union blockade of the Confederate coastline. Before nightfall, the *Virginia* had wreaked havoc upon the Union blockading fleet: the USS *Cumberland* lay at the bottom of the Roads, her flags still defiantly flying while the surrendered USS *Congress* blazed ominously in the harbor until exploding spectacularly in the early morning hours of March 9. The USS *Monitor* – a vessel of a radical new design and completely untried in battle – arrived too late to make a difference on the 8<sup>th</sup>, but met the *Virginia* on the morning of the 9<sup>th</sup> in a contest that signaled the first time ironclad had met ironclad in combat. While their four-and-a-half battle ended in a draw, it changed much of the course of naval warfare."

On March 13, I know what I said, and that the end of Winter is still officially eight days away, the Library is proud to present Professor Martha Jones of the Johns Hopkins University Krieger School of Arts and Sciences who will discuss her book "Birthright Citizens: A History of Race and Rights in Antebellum America." *Birthright Citizens* tells the story of how African American activists radically transformed the terms of citizenship for all Americans. Before the Civil War, colonization schemes and black laws threatened to deport former slaves born in the United States. *Birthright Citizens* recovers the story of how African American activists remade national belonging through battles in legislatures, conventions, and courthouses. They faced formidable opposition, most notoriously from the United States Supreme Court decision in Dred Scott. Still, Professor Jones explains, no single case defined their status. Former slaves studied law, secured allies, and conducted themselves like citizens, establishing their status through local, everyday claims. All along they argued that birth guaranteed their rights. With fresh archival sources and an ambitious reframing of constitutional law-making before the Civil War, Jones shows how when the Fourteenth Amendment constitutionalized the birthright principle, the aspirations of black Americans' aspirations were realized.

On April 10, Professor Thomas E. Lovejoy, a Senior Fellow at the United Nations Foundation and University Professor in the Environmental Science and Policy department at George Mason University, will present a lecture on biodiversity. An

ecologist who has worked in the Brazilian Amazon since 1965, Professor Lovejoy works on the interface of science and environmental policy. Starting in the 1970's he helped bring attention to the issue of tropical deforestation and in 1980 published the first estimate of global extinction rates (in the Global 2000 Report to the President). He conceived the idea for the long term study on forest fragmentation in the Amazon (started in 1978) which is the largest experiment in landscape ecology, the Minimum Critical Size of Ecosystems project (also known as the Biological Dynamics of Forest Fragments Project). He also coined the term "Biological diversity", originated the concept of debt-for-nature swaps and has worked on the interaction between climate change and biodiversity for more than 30 years. He is the founder of the public television series "Nature". In the past, he served as the Senior Advisor to the President of the United Nations Foundation, as the Chief Biodiversity Advisor to the World Bank as well as Lead Specialist for the Environment for the Latin American region, as the Assistant Secretary for Environmental and External Affairs for the Smithsonian Institution, and as Executive Vice President of World Wildlife Fund-US. In 2002, he was awarded the Tyler Prize, and in 2009 he was the winner of BBVA Foundation Frontiers of Knowledge Award in the Ecology and Conservation Biology Category. In 2012 he received the Blue Planet Prize. He has served on advisory councils in the Reagan, George H. W. Bush, and Clinton administrations. In 2009 he was appointed Conservation Fellow by the National Geographic Society. He chaired the Scientific and Technical Panel for the Global Environment Facility which provides funding related to the international environmental conventions from 2009-2013 and serves as Advisor to the current Chair.

In May, on a date yet to be set, Thomas Geoghagen of Despres, Schwartz and Geoghagen of Chicago will speak on private sector labor law from a union perspective. Over the years, Mr. Geoghagen has represented labor unions and employee groups in many significant cases in various United States district courts and courts of appeals. He argued before the United States Supreme Court in *Union Pacific Railroad Company v. Brotherhood of Locomotive Engineers and Trainmen*, 558 U.S. 67 (2009), prevailing in a 9-0 decision. His labor union clients include the Brotherhood of Locomotive Engineers and Trainmen, General Committees of Adjustment, and the Chicago Teachers Union. In addition to his labor and employment law practice, he has participated in a variety of public interest cases. He successfully settled a class action against Advocate Health Systems to provide more charity care to the indigent and to stop collection cases against those unable to pay. He represented the homeless in a suit to require the City to take efficient measures to curb the spread of tuberculosis. He also brought the first litigation challenging hand gun owners for creating a public nuisance by the negligent spread of handguns to young people.

Mr. Geoghagen has written six books including *Which Side Are You On?* (1991), cited as one of the best five non-fiction books in that year by the National Book Critics Circle. He has written for the *New York Times*, *The Nation*, *Harper's*, *Slate*, *Bloomberg View*, and other publications. His latest book, *Only One Thing Can Save Us: Why America Needs a New Kind of Labor Movement*, was released in December 2014. In

the fall of 1994, he was a Fellow at the Institute of Politics at Harvard University. In 2004 he was a Fellow at the American Academy in Berlin.

## **NEW ACQUISITIONS**

### Horwitz Collection

Barton, Benjamin H. & Stephanos Bibas, Rebooting justice: more technology, fewer lawyers, and the future of law. (2017) HORWITZ 340.73 B37R

Bibas, Stephanos, The machinery of criminal justice. (2012) HORWITZ 345.73 B53M

Driver, Justin, The schoolhouse gate: public education, the Supreme Court, and the battle for the American mind. (2018) HORWITZ 344.73 D75S

Liebmann, George W., America's political inventors: the lost art of legislation. (2018) HORWITZ 328.73 L54A

Lord Sumption and the limits of the law, edited by N. W. Barber, Richard Ekins and Paul Yowell. (2016) HORWITZ 341.48 L67

Sutton, Jeffrey S., 51 imperfect solutions: states and the making of American constitutional law. (2018) HORWITZ 342.73 S88F

### Maryland Documents

Republican press at a Democratic Convention: reports of the 1867 Maryland Constitutional Convention by the Baltimore American and Commercial Advertiser, with annotations and commentary by John J. Connolly. (2018) MD.DOCS. 1600 .A1 1867R

### Office

Appellate practice for the Maryland lawyer: state and federal, 5th ed., Paul Mark Sandler, Andrew D. Levy, Steven M. Klepper, editors. (2018) OFFICE - KFMD 1755 .A9 2018

### Treatises

Schoenbaum, Thomas J., Admiralty and maritime law, 6th ed. (2018) KF1104 .S36 2018

## **HOLIDAY CLOSINGS**

The following is a list of upcoming holiday closings. Remember that on those days when the Bar Library closes at 6:00 P.M. the rest of the Courthouse is closed and those wishing to use the Library must enter the Courthouse through the Lexington Street door.

Monday, December 24 (Christmas Eve) – Closed

Tuesday, December 25 (Christmas Day) – Closed

Monday, December 31 (New Years' Eve) – Close at 2:00 P.M.

Tuesday, January 1 (New Years' Day) – Closed

Monday, January 21 (Dr. Martin Luther King, Jr.'s Birthday) – Close at 6:00 P.M.

Monday, February 18 (Presidents' Day) - Close at 6:00 P.M.