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Dr. Herbert Alan Johnson: Scholar, Colleague, Teacher, Mentor, and Friend

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Burke: Dr. Herbert A. Johnson
DR. HERBERT ALAN JOHNSON
SCHOLAR, COLLEAGUE, TEACHER, MENTOR, AND FRIEND

W. LEWIS BURKE*

When asked to write a conclusion to this tribute to Herbert A. Johnson, I was honored and then somewhat awed by the task. First, not many of my colleagues have been given a career dedication by a scholarly organization of international renown. At its Fall, 2004 meeting held in Austin, Texas, the American Society of Legal History honored the scholar, Herbert Johnson with the Presidential Panel entitled "Herbert Johnson: Writing American Constitutional History." Second, in preparation for hosting a reception for the meeting so that the University of South Carolina School of Law could also honor Herb, I obtained a copy of his resume. It is currently twenty-three pages long. His resume is longer than many academic articles and will certainly be longer than this short tribute. Third, Herb is one of the preeminent scholars of American Legal History. I do not even possess an undergraduate degree in history, so in some respects, I feel inadequate to speak with any authority about Herb. Herb's scholarship is so wide-ranging and of such depth that a simple essay cannot capture the full measure of Herb as a scholar. Finally, as noted by Andy Siegel, it is highly problematic to write a tribute to a man who is only supposedly "retired." While he may be *emeritus* faculty at South Carolina, he is certainly not retired. He continues to research, write, and publish. So this cannot, and will not, be the final word on Herb. As Herb's good Episcopalians would say, "Thanks be to God."

Nonetheless, I must pay tribute to my colleague, but not just because he has been my colleague for nearly twenty-seven years. I write this tribute because it is an honor to give some long overdue credit to my friend, Herbert Alan Johnson.

Herb has truly been a great colleague and friend. After many years of clinical work, I found myself enamored with legal history, but without any background I felt I could not possibly begin publishing in the field. Herb was one of the first people I talked to about my interest. Instead of discouraging me because I did not have a Ph.D., he said that a good lawyer could be taught to be an historian. With Herb's encouragement, I forged ahead, and soon had an article published in a legal history journal. Herb also encouraged me to start attending the meetings of the American Society for Legal History. Without Herb, I would not have attended. He graciously introduced me to all the right people and encouraged me in every way. Soon I was presenting a paper at an ASLH annual meeting and networking with other legal historians. More publications have followed, including three books on legal history. Obviously Herb's mentoring has been crucial to my career. So on a most personal level, I owe Herb a heartfelt and abiding thank you.

As a member of the faculty at the University of South Carolina Law School, and the university community at large, I offer more appreciation. Herb's tenure on the University of South Carolina School of Law faculty was always marked by his belief in quality scholarship and education. Some of my fondest memories are of

* Professor of Law and Chair of the Department of Clinical Legal Studies, University of South Carolina School of Law. The symposium piece is the direct result of the persistence of my good friend and colleague, Andy Siegel and the support of our dean, Burnele Powell. Of course, there would be no occasion to write this piece if it were not for my dear friend Herb Johnson.

Herb as an advocator for maintaining a strong curriculum and faculty. With his stellar background and career, one would expect Herb to be a traditionalist about legal education. But because he was also a legal historian, he was both an advocate for tradition and of innovation. Despite his seemingly “traditional” view of legal education, he was a strong supporter of clinical legal education and other innovations in the curriculum. He believed that the faculty should be composed of traditional scholars, inter-disciplinary teachers, and practitioners. Dr. Johnson never forgot that early in his career, he practiced law. With such an open mind, he also relished teaching a broad range of courses, everything from American Legal History, to Family Law, to Constitutional Law, to Trust and Estates. He also enriched the life of the law school outside of the classroom by serving as the Hollings Professor of Constitutional Law and Director of the Hollings Center at the University of South Carolina. He organized scholarly conferences that varied from Francis Lieber to Australian constitutional law.

No matter what the other contributors have said, I cannot write about Herb without writing about his scholarship. Herb’s work ranges from editing the John Marshall Papers, to editing the University of South Carolina Press’ series on the Chief Justices of the United States Supreme Court, to writing books that cover from *The Law Merchant and Negotiable Instruments in Colonial New York* to *Wingless Eagle: US Army Aviation thru WWI*. In fact, he has written or edited thirteen books, including such other major works as *The Chief Justiceship of John Marshall, 1801-1835*; *John Jay: Colonial Lawyer*; *History of Criminal Justice, American Legal and Constitutional History*; and the two volume work *The Papers of John Marshall*. He has also already authored fifty-three law review articles, history articles, book chapters, and essays. He has written over fifty book reviews. Herb has presented nearly fifty papers at conferences across the United States and around the world. Herb’s scholarship and teaching have won numerous prizes and grants from such diverse institutions as New York State Historical Association, Loyola University Press, the American Philosophical Society, the Institute for Humane Studies, The Judicial Conference of the United States, and the United States Air Force Research Center.

Herb has served the University, the law school, and the academic world in numerous capacities. He has been active with the American Society for Legal History for thirty-five years, serving that organization in such capacities as chairing committees to a term as president. He is also a member of such learned societies as the American Law Institute, the Selden Society, the Osgoode Society, the Library Company of Philadelphia, the Stair Society, the University South Caroliniana Society, the American Council of Learned Societies, and the Societe Jean Bodin pour l’Histoire Comparativ de Institutions. Herb has also served numerous historical organizations, such as the American Antiquarian Society, the Association for the Preservation of Virginia Antiquities, the American Historical Association, and the Association of American Law Schools Section for Legal History. Herb served on numerous committees of the University, the law school, as well as of many professional associations.

Herb has had a wide ranging career. Herb’s first jobs were in banking in New York City. Herb was an officer in the United States Air Force, serving as a lieutenant and investigator, and he achieved the rank of Colonel in the Air Force Reserves. Herb spent ten years at The College of William and Mary in Virginia as Editor of the John Marshall Papers. He taught at Columbia University, Hunter College, the University of Melbourne, the University of Toronto, the University of

Birmingham, the College of Notre Dame, Hunter College of the City University of New York, and Herb held a joint appointment for thirteen years as a professor in the History Department and the law school at the University of South Carolina. In 1990, Herb became full time at the law school. In 2002, Herb took *emeritus* status.

Herb also leads a full life outside of academia walls. He is the father of two daughters and is married to a lawyer, Jane. The Johnsons are very active in the Episcopal Church. In fact, from 1981 to 1984, Herb was a student at the Lutheran Theological Southern Seminary and, in 1991, was ordained a vocational Deacon in the Episcopal Church. His community service in more recent years has revolved around his ministry. He served as a Chaplain Associate at the Baptist Medical Center in Columbia, South Carolina and as a committee member for the South Carolina Episcopal Home at Still Hopes. Herb served in the Diocese of Upper South Carolina until his retirement from the law school, when he and Jane moved to North Carolina; he now is an active deacon in the Diocese of Western North Carolina. As a deacon, he not only preaches, but also serves communion to those unable to attend church. Herb also has a special ministry to those in hospice care, and his ministry to those in the last stages of their lives is not only remembered by the surviving families but also has served as an inspiration to many people, including two law school faculty members who have taken on similar ministries.

We have plenty of reason to honor Herb with this symposium issue. Most of all, we express our appreciation for all that Herb has given to legal education, American legal history, the University of South Carolina, the law school, the church, the community, and the nation. Thankfully, this is hardly a farewell. Herb remains a very active scholar and colleague. He comes to the law school on a regular basis, continuing to research, write, and mentor those of us who must find a way to walk in his large footprints. As we follow and emulate Herb, it is appropriate to do as Herb would do and simply say, "Thank you and peace be with you."

CURRICULUM VITAE

PERSONAL

Born January 10, 1934 at Jersey City, New Jersey, to Harry O. Johnson and Magdalena G. Johnson (Diemer)

Married (1st) Barbara Arlene Balcerak (deceased, 1980); two children, Amanda Blair Johnson and Vanessa Paige Johnson

Married (2d) Jane McCue, June 4, 1983

Education

A.B., Columbia, 1955; LL.B., New York Law School, 1960; M.A., Columbia, 1961; Ph.D., Columbia (American History and European Comparative Law), 1965

Other Education

Columbia University School of Law (professional option student), 1954-55

United States Air Force Special Investigations School, Washington, D.C., 1955-56

New York University Graduate School of Business Administration, 1957-58

Lutheran Theological Southern Seminary (non-degree student), 1981-84

Academic Employment

Research Assistant, The Papers of John Jay, Department of History, Columbia University, 1961-63

Lecturer in History, City College of the City University of New York, 1962-63

Jacob H. Schiff Fellow, Faculty of Political Science, Columbia University, 1963-64

Lecturer in History and Assistant Professor of History, Hunter College of the City University of New York, 1964-67

Associate Editor, Co-editor and Editor, The Papers of John Marshall, Institute of Early American History and Culture; Lecturer in History, The College of William and Mary, 1967-77

Professor of Law and History, University of South Carolina, 1977-90; Ernest F. Hollings Professor of Constitutional Law, 1991-2002; Distinguished Professor of Law Emeritus, 2002-present

Other Academic Affiliations

Associate, Columbia University Seminar on the History of Legal and Political Thought, 1966-77

Associate, Columbia University Seminar on Early American History and Culture, 1967-77

Lecturer, Seminar on American Culture, New York State Historical Association, 1969 ("Law and the Lawyers of New York, 1750-1850"); 1975 ("New York in the American Revolution, 1763-1783")

Visiting Research Professor, Southern Studies Program, University of South Carolina, Spring 1976, and Fall 1977

Senior Faculty Member, Seminar on Law and Economics, Humane Studies Foundation and Institute for Humane Studies, College of Notre Dame, July 28-August 3, 1990

Visiting Fellow, Centre for Comparative Constitutional Studies, University of Melbourne Law School, July 22- October 23, 1992

Visiting Research Scholar, University of Toronto Law Faculty, July 1995

Visiting Professor, Faculty of Law, University of Birmingham (U.K.), January-April 1998

Bar Admissions

New York (First Department), 1960; United States District Court for the Southern District of New York, 1963; United States Court of Appeals for the Second Circuit, 1964; United States Supreme Court, 1965; United States District Court for the District of Columbia, 1967; United States District Court for the District of South Carolina, 1979; State of South Carolina, 1983.

Other Employment

Junior Clerk and Clerk, First National City Bank of New York, Summers 1952, 1953 and June 1955 to October 1955

United States Air Force, Office of Special Investigations, Special Agent and Acting Detachment Commander (First Lieutenant), 1955-57; presently Colonel, USAF Reserve (Retired)

Administrative Assistant, Chase Manhattan Bank, Custody Administration Division and Trust Administration Division, 1957-60

Private Practice of Law, Sole Practitioner and "Of Counsel" to other attorneys, New York City, 1960-67, with a number of cases in the Surrogate's Courts, Civil Court and Supreme Court

Awards and Prizes

Prize Winner, Cannon Prize Examinations, Chase Manhattan Bank (in bank administration and operations) 1958, 1959 and 1960

American Jurisprudence Prize Volume in Estate Planning, New York Law School, 1960

William P. Lyons Masters' Essay Award, Loyola University Press, 1962

Grant-in-aid, Columbia University, 1962-63; Jacob H. Schiff Fellowship, 1963-64

Paul S. Kerr History Prize, New York State Historical Association, 1970

American Philosophical Society, Grant in support of research, 1971

American Council of Learned Societies Fellowship, 1974-75

Liberty Fund Fellow, Institute for Humane Studies, Summer 1981

Senior Research Fellow, U.S. Army Historical Research Institute, December 1981

Earhart Fellow, Institute for Humane Studies, Summer, 1985

Research Grant, Committee on Research and Productive Scholarship, University of South Carolina, 1989-90

Summer Grant for Research on Federal Judicial History, Committee on the Bicentennial of the Constitution, Judicial Conference of the United States, 1990

Center Research Associate, United States Air Force Historical Research Center, Maxwell Air Force Base, Alabama, 1990

University of South Carolina Educational Foundation Research Award (Professional Schools), University of South Carolina, 2000

Faculty Research Award, University of South Carolina School of Law, 2001-2002

Organizational Activities

Member, American Historical Association, American Society for Legal History, Library Company of Philadelphia, Selden Society, Societe Jean Bodin pour l'Histoire Comparativ de Institutions, Stair Society, Osgoode Society, University South Caroliniana Society, American Law Institute.

Executive Assistant to the President (1970-71), Vice President (1972-73), President (1974-75), Board of Directors (1998-2001), American Society for Legal History

Chairman, Committee on Honors (1970-71, 1996-98), and Program Committee (1971), American Society for Legal History

Committee Member, Publications Committee (1966-69), and Committee for the Preservation of Court Records (1968-69), American Society for Legal History

Delegate to the American Council of Learned Societies, American Society for Legal History (1977-80)

State Correspondent for South Carolina, The Selden Society, 1988-2002

Committee Member, Littleton-Griswold Committee, American Historical Association (1976-81); Chairman, 1979-81.

Member, Interim Committee on the Bicentennial Era, 1776-1789, American Historical Association (1976-77)

Committee Member, John Marshall House Committee, Association for the Preservation of Virginia Antiquities (1969-77)

Member, National Board of Trustees, Fund Raising Campaign for the John Marshall House (1972-74)

Trustee, Fund for Cooperative Editorial Research, American Antiquarian Society (1972-76)

Chairman-elect, Association of American Law Schools Section on Legal History, 1978; Chairman, 1979

Member, Surrency Prize Committee, American Society for Legal History, 1982-87, 1996

Member, Claude R. Lambe Fellowship Review Committee, Institute for Humane Studies, 1987-date.

Member, Law-Related Education Committee, South Carolina Bar, 1989-1995, 1997-1999.

Community Service

Member, City of Williamsburg Board of Adjustments and Appeals (1971-77)
Member, Research and Publications Advisory Committee, Heritage 1976 Committee, American Revolution Bicentennial Commission (1974-75)

Chaplain Associate and Hospice Volunteer, Baptist Medical Center, Columbia (1983-2002)

Member, Ethics Committee, South Carolina Episcopal Home at Still Hopes, 1989-1998.

Vocational Deacon, The Episcopal Church, Diocese of Upper South Carolina,
1991-2003; Diocese of Western North Carolina, 2003-date

Chaplain, Angel Medical Center Hospice, Franklin, N.C., 2002-present

Member, Advisory Board, Angel Medical Center Home Health and Hospice, 2002-
present

Courses Taught

City College, City University of New York

Survey of American History, 1492-1860

Hunter College, City University of New York

Seminar on the Legal and Social Consequences of Industrialism, 1700-
1850 (Britain, France and the United States), undergraduate senior
honors seminar

Survey of American History, 1492-1960

American Constitutional History, 1783-1900

American Constitutional History, 1783-1965 (graduate course)

College of William and Mary

Survey of American History, 1866-1968

American Constitutional History, 1783-1900

American Constitutional History, 1783-1877

American Constitutional History, 1878-1970

Seminar on Early American Legal History, 1607-1815

University of South Carolina

American Constitutional History, 1783-present

American History Survey to 1865

American History Survey 1865 to present

American Intellectual History

American Legal History

American Constitutional and Legal History

Colloquium on American Constitutional History, 1781-1835

Colloquium on Private Property in American Law, 1800-1850

Seminar in American Legal History

English Legal History

English Origins of the North American Constitutions

History of Criminal Justice

Comparative Constitutional Law (U.S., Canada, Australia)

Constitutional Law (2 semester course)

Domestic Relations

Introduction to Legal Reasoning and Legal Writing

Introduction to Legal Research and Appellate Advocacy

Trusts and Estates

University of Birmingham (U.K.), Faculty of Law

British Constitutional Law (supervision / tutorial sections)

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The Law Merchant and Negotiable Instruments in Colonial New York 1664-1730. Chicago: Loyola University Press, 1963. Reprinted: Union, N.J.:The Lawbook Exchange, 2002.

John Jay, 1745-1829. Albany: University of the State of New York, State Education Department, 1970.

The Papers of John Marshall, with Charles T. Cullen. Chapel Hill, N.C., University of North Carolina Press, Vol. I (1974), Vol. II (1977).

Historical Courthouses of New York State: 18th and 19th Century Halls of Justice Across the Empire State, with Ralph K. Andrist and Milo V. Stewart. New York: Columbia University Press, 1977.

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South Carolina Legal History. Spartanburg: The Reprint Company, 1980.

George L. Haskins and Herbert A. Johnson, Foundations of Power--John Marshall, 1801-1815, Volume 2, History of the Supreme Court of the United States, Paul A. Freund, ed. New York: Macmillan Company, 1981.

Essays on New York Colonial Legal History. Westport: Greenwood Press, 1981.

History of Criminal Justice. Cincinnati: Anderson Publishing Co., 1988; 2nd edition, with Nancy Travis Wolfe, Cincinnati: Anderson Publishing Co., 1995; 3rd edition, with Nancy Travis Wolfe, Cincinnati: Anderson Publishing Co., 2003.

John Jay: Colonial Lawyer. New York: Garland Publishing Co., 1989.

American Legal and Constitutional History: Cases and Materials. San Francisco: Austin & Winfield, 1994; 2nd edition, Lanham: University Press of America, 2001.

The Chief Justiceship of John Marshall, 1801-35. Columbia: University of South Carolina Press, 1997; paperback edition, Columbia: University of South Carolina Press, 1998.

Wingless Eagle: U.S. Army Aviation through World War I. Chapel Hill: University of North Carolina Press, 2001.

Book Chapters:

"The Advent of Common Law in Colonial New York," in George A. Billias, ed., Law and Authority in Colonial America (Barre, Mass.: Barre Press, 1965).

"American Colonial Legal History: A Historiographical Interpretation," in Alden T. Vaughan and George Athan Billias, eds., Perspectives on Early American History: Essays in Honor of Richard B. Morris (New York: Harper & Row, 1973).

"Gibbons v. Ogden before Marshall," in Leo Hershkowitz and Milton M. Klein, eds., Courts and Law in Early New York (Port Washington, N.Y.: Kennikat Press, 1978), 105-113, 147-148.

"Concepts of Crime in Simms' Revolutionary Novels," in Herbert A. Johnson, ed., South Carolina Legal History (Spartanburg, S.C.: The Reprint Company, 1980), 199-208.

"The Palmetto and the Oak: Law and Constitution in Early South Carolina, 1670-1800," in Kermit L. Hall and James W. Ely, Jr., An Uncertain Tradition: Constitutionalism and the History of the South (Athens: University of Georgia Press, 1989), 83-101.

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"Sanctions in Colonial North America," in Punishment: Transactions of the Jean Bodin Society for Comparative Institutional History, LVIII (Brussels: DeBoeck-Universite, 1991), 109-153.

"Religious Societies," in South Carolina Jurisprudence, XXVII (Columbia: South Carolina Bar, 1996), 321-400 (with James K. Lehman).

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"Toward a Reappraisal of the 'Federal' Government: 1783-1789," American Journal of Legal History, VIII (1964), 314-325. Reprinted in Kermit L. Hall, ed., United States Constitutional and Legal History, 20 vols., (New York: Garland Publishing Co., 1987), III, 356-367.

"Civil Procedure in John Jay's New York," American Journal of Legal History, XI (1967), 69-80.

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"Judicial Institutions in Emerging Federal Systems: The Marshall Court and the European Court of Justice," John Marshall Law Review, XXXIII (Summer 2000), 1063-1108.

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"Fundamental Constitutions of Carolina," in Paul Finkelman, ed., Religion and American Law: An Encyclopedia (New York: Garland Publishing, Inc., 2000), pp. 202-204.

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"James Kent," and "John Marshall," in John R. Vile, Great American Judges An Encyclopedia, John R. Vile, editor, 2 vols. (Santa Barbara, ABC Clio, 2003), I, 433-441; II, 487-495.

Other Articles:

"The Admiralty Court Comes to Morrisania," The Advocate (Bronx County Bar Association), IX (1962), 15-21.

"When John Jay was Jack," Columbia College Today, X (1963), 48-51.

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"The Constitutional Thought of William Johnson," South Carolina Historical Magazine, LXXXIX (1988), 132-145.

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"The Wright Patent and U. S. Military Aviation in World War I," World War I Aero: The Journal of the Early Aeroplane, No. 164 (May 1999), 6-16.

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"American Air Power Doctrine and the First World War, 1914-18," World War I Aero: The Journal of the Early Aeroplane, No. 171 (February 2001), 17-26; No. 173 (August 2001), 57-62.

Book Reviews:

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Leonard W. Levy, Origins of the Fifth Amendment: The Right Against Self-Incrimination, reviewed in New England Quarterly, XLI (1968), 613-615.

Robert G. McCloskey, eds., Works of James Wilson, reviewed in William and Mary Quarterly, 3rd Series, XXVI (1969), 151-152.

Robert K. Faulkner, The Jurisprudence of John Marshall, reviewed in William and Mary Quarterly, 3rd Series, XXVI (1969) 448-450.

Gerald Gunther, John Marshall's Defense of McCulloch v. Maryland, reviewed in Virginia Magazine of History and Biography, LXXXVIII (1970), 113-114.

Julius Goebel, Jr., The Law Practice of Alexander Hamilton, Volume II, reviewed in New York History, LI (1970), 413-415.

Mattie Erma Edwards Parker, ed., North Carolina Higher-Court Records, 1670-1696, and Neal W. Allen, Jr., ed., Province and Court Records of Maine, Volume V, reviewed in William and Mary Quarterly, 3rd Series, XXVIII (1971), 157-159.

Paul S. Clarkson and R. Samuel Jett, Luther Martin of Maryland, reviewed in Virginia Magazine of History and Biography, LXXIX (1971), 114-115.

S. Sidney Ulmer, Military Justice and the Right to Counsel, and Robert Sherrill, Military Justice is to Justice as Military Music is to Music, reviewed in Military Affairs, XXXV (1971), 28.

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Frank L. Klement, The Limits of Dissent: Clement L. Vallandigham and the Civil War, reviewed in Military Affairs, XXV (1972), 162.

George W. Keeton, Shakespeare's Legal and Political Background, reviewed in American Journal of Legal History, XVI (1972), 89-90.

Richard E. Ellis, The Jeffersonian Crisis: Courts and Politics in the Young Republic, reviewed in Virginia Magazine of History and Biography, LXXX (1972), 106-107.

Robert M. Ireland, The County Courts in Antebellum Kentucky, reviewed in The Filson Club Quarterly, XLVII (1973), 56-58.

Lawrence M. Friedman, A History of American Law, reviewed in DePaul Law Review, XXIII (1974), 1086-1089.

Stow Pearsons, The Decline of American Gentility, reviewed in The Historian, XXXVII (1974), 149-150.

Journal of the Proceedings of the Congress Held at Philadelphia: September 5, 1774: A Facsimile of the Official Edition Printed in 1774, Introduction by Edwin Wolf 2d, reviewed in New England Quarterly, XLVIII (1975), 166.

Joseph W. Bishop, Jr., Justice Under Fire: A Study of Military Law, reviewed in Military Affairs, XXXIX (1975), 90-91.

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"Opportunities and Challenges in Editing Legal and Judicial Documents," at the Center for Editorial and Textual Studies in Humanistic Sources, University of Virginia, May 1971.

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Discussant, "Separation of Church and State," Clergy and Law Conference, Lutheran Theological Southern Seminary, June 22, 1990.

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"Hierarchical and Congregational Church Clergy," at Clergy and the Law Conference VII (Continuing Lawyers' Education), Lutheran Theological Southern Seminary, June 18, 1993.

"John Jay and the Supreme Court," at The Speranza Lectures for 1995: The Life and Legacy of John Jay, delivered at Columbia University on December 12, 1995.

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"Chief Justice John Marshall (1801-1835)," a lecture delivered on April 9, 1997, as the first lecture in the series "The Chief Justiceship: The Role of the Nineteenth and Twentieth Century Chief Justices", sponsored by the Supreme Court Historical Society.

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