



Quarterly

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Society Celebrates Thirteenth Anniversary

The Caucus Room of the Russell Senate Office Building was the setting for the Society's annual lecture on May 6, 1988. The lecture marked the first event of the Society's thirteenth annual meeting. The lecture, delivered to a standing-room-only audience, was presented by Justice Sandra Day O'Connor, and was entitled "Establishing Justice". The lecture will be published in its entirety in the 1988 *Yearbook*. A brief summary follows.

Justice O'Connor's lecture dealt with the framers' debates and intentions in the development and creation of the judicial branch of the government. Justice O'Connor said that the goals and intentions of the framers were set forth quite clearly in the Preamble to the Constitution. She noted that "if the order of the list of their purposes means anything, 'establishing justice' was particularly important; it ranks second only to forming a more perfect union."

In considering the various meanings that could be attached to the phrase itself, she noted that "from my perspective as a judge, one thing that 'establish justice' surely means is the establishment of a judicial system." Justice O'Connor pointed out that a review of the records of the Constitutional Convention show that relatively little time was spent debating the formation and work of the judicial branch.

Justice O'Connor further commented that this lack of discussion seemed to be at least partially attributable to the fact that the framers generally had a high regard for the judiciary. In the floor debates, James Wilson "pointed to the example of Great Britain where he felt the 'security of private rights is owing entirely to the purity of her tribunals of justice.'"

Continuing her discussion, Justice O'Connor said that the Constitutional Convention records reveal that the concept of "one supreme tribunal," was accepted quite readily by the delegates, to insure uniform and consistent interpretation and enforcement of the law. The creation and role of inferior federal courts was a more troublesome task, however, and delegates varied in their conceptions of an appropriate federal courts system. This problem was never totally resolved, and in the end, the delegates agreed to disagree, leaving the task to the legislative branch to create such lower courts as it deemed necessary.



Chief Judge Howard T. Markey, who served as this year's Annual Meeting Chairman, welcomes this year's speaker, Justice Sandra Day O'Connor, who addressed a record crowd in the Russell Senate Office Building Caucus Room.

Justice O'Connor also noted that another critical problem the framers debated concerned the selection and appointment of federal judges, as well as their terms of service and payment. The discussions over these issues centered chiefly around who would have the power to appoint the judges.

In her lecture, Justice O'Connor quoted the records of the Constitutional Convention in showing how these and all the important issues relating to the federal judiciary's development

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A Letter from the President



Society President Justin A. Stanley

On Friday, May 6, 1988, we held the thirteenth annual dinner of the Society in the Great Hall of the Supreme Court Building. This was the first time in many years that our dinner did not coincide with the annual meeting of the American Law Institute and we were somewhat concerned about our attendance. Happily, some 250 members attended, just enough to fill comfortably the Great Hall.

Prior to the reception and dinner, the annual meetings of both the general membership and the trustees were held in the Supreme Court Chamber.

Earlier in the day, Associate Justice Sandra Day O'Connor gave the annual lecture, entitled "Establishing Justice". The speech related the story of the development of the judicial article at the Constitutional Convention. Justice O'Connor held the full attention of an audience of more than one hundred and twenty, the largest audience we have had for an annual lecture.

The Chief Justice and Mrs. Rehnquist, as well as Justice O'Connor and Mr. O'Connor, and Chief Justice Burger and Mrs. Burger, all joined us for the reception and dinner. In his brief remarks of welcome, the Chief Justice referred to the strength of the Society, which he found very encouraging.

At the members' business meeting, four new trustees were

elected: Noel Augustyn, the Administrative Assistant to the Chief Justice; syndicated columnist James J. Kilpatrick, Miami attorney Hugo L. Black, Jr., and Robert Breeden, Senior Vice-President of the National Geographic Society.

At the trustees' business meeting, the chairpersons of all standing committees as well as Noel Augustyn, E. Barrett Prettyman, Jr. and M. Truman Woodward, Jr. of New Orleans were elected to serve on the Executive Committee. The officers serve ex officio.

I was pleased to be able to announce that all standing committees were named and functioning and that, in addition, Jonathon Schraub had been appointed to serve as our General Counsel.

Since no officer's term had expired, the incumbent officers are to continue in office for the current year.

I also reported that our recently established endowment is at just under \$100,000 and it is hoped that this will be increased through the efforts of Vincent Burke, Chairman of the Special Gifts Committee, and the other members of that Committee. Without instituting a "campaign," we hope to add year by year to the endowment so that we can count on it to supply funds needed to strengthen our programs, such as that of scholarly research on various aspects of the history of the Court.

We will welcome any and all contributions, great or small. If anyone is interested, please get in touch with Mr. Burke, David Pride, our Acting Executive Director, or me.

We will also welcome your assistance in getting new members. If each of you could produce, on the average, one half a member this year, it would put us in a very strong position. John Shepherd is the Chairman of the Membership Committee and you can get in touch with him if you have any suggestions, or contact your state membership chairman, David Pride, or me.

Fellows Commission Accepting Applications

The Judicial Fellows Commission has announced that it is accepting applications for the 1989-1990 fellowships. The judicial fellows program, established in 1972, is patterned after the White House and Congressional fellowships, and is designed to attract to the Judicial Branch outstanding individuals from a variety of disciplines. While an interest in judicial administration is important, the commissioners look for applicants who show promise of making a significant contribution to the judiciary.

Two fellows will be appointed by the Commission for a one-year period beginning in September 1989 to serve at the Supreme Court of the United States or the Federal Judicial Center. Requirements state that applicants "should be familiar with the judicial system, have at least one postgraduate degree and two or more years of successful professional experience."

Fellowship stipends are based on salary histories of the applicants as well as salaries established for comparable government work, but will not exceed the GS 15, step 3 level, currently set at \$58,567.

Information about the Judicial Fellows Program and on application procedures is available upon request from Vanessa Yarnall, Associate Director, Judicial Fellows Program, Supreme Court of the United States, Room 5, Washington, D.C. 20543. (202) 479-3374. Application materials should be submitted by November 15, 1988.

1987 Yearbook to be Mailed in August: Society Seeks Papers for 1988 Edition

The Society will be mailing its 1987 *Yearbook* to all members in August. The 1987 edition includes articles by retired Chief Justice Warren Burger, Associate Justice Byron R. White, and Circuit Judge Kenneth W. Starr, among others.

In an effort to return the *Yearbook* to a more timely schedule, the Society has issued a "call for papers" for the 1988 edition in a number of professional journals and is inviting members with appropriate works to submit them for review.

THE SUPREME COURT HISTORICAL SOCIETY

Quarterly

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Editor Alice L. O'Donnell
Managing Editor Kathleen Shurtleff

Annual Meeting (continued from page one)

were resolved. Throughout the talk she also made personal comments based on her experience.

In conclusion, she expressed her hope that "when we judges exercise this influence and power during the third centennial of our franchise that we also consistently exercise the sound judgment the framers were so confident we possess."

After the lecture was adjourned, members of the Society and their guests were invited to attend a special tour of the Supreme Court. This tour was given under the direction of the Curator of the Supreme Court, Gail Galloway. Priscilla Goodwin, Tour Director in the Office of the Curator, led the tour which visited several areas not usually open to visitors, including the Justices' Dining Room and the Conference Room. Ms Goodwin discussed the symbolism of the friezes and decorative motifs used in the Court, as well as explaining about the materials used in the construction of the building. (Ms Goodwin has written an article about the bronze work in the Supreme Court Chamber which appears in this issue of the *Quarterly*.)

At 6:30 P.M. the meeting of the general membership of the Society was held in the Supreme Court Chamber conducted by President Justin A. Stanley. Mr. Stanley presented a report on the Society's accomplishments throughout the past year. (A synopsis of his report appears in this issue as "A Letter From The President".) After outlining some of the activities of the past year, Mr. Stanley called on Mrs. Virginia Daly, Chairperson of the Nominating Committee, to present nominations for trustees of the Supreme Court Historical Society. Noel J. Augustyn, Hugo L. Black, Jr., Robert L. Breeden, and James J. Kilpatrick were all elected to an initial three-year term as members of the Board of Trustees. In addition, Ralph E. Becker, Griffin B. Bell, Kenneth S. Geller, William T. Gossett, Erwin N. Griswold, Joseph H. Hennage, Bruce E. Kiernat, Rex E. Lee, Howard T. Markey, Norman E. Murphy, Dwight D. Opperman, E. Barrett Prettyman, Jr., Fred Schwengel, John C. Shepherd, and M. Truman Woodward, Jr. were reelected to three-year terms as members of the Board of Trustees. Following the elections and after a few

general remarks, the Meeting of the General Membership was adjourned.

The meeting of the Board of Trustees followed the General Membership meeting. In the absence of Kenneth Rush, Chairman of the Board of Trustees, Mr. Stanley presided. Society Treasurer, Peter A. Knowles, presented the Society's most recent financial reports, informing the members and Trustees that the Society had enjoyed a successful year financially. Mrs. Daly presented the names of nominees for election to a one-year term as a member of the Executive Committee.

After the meetings were adjourned, Society members and guests attended the thirteenth annual reception and dinner. The reception was held in the handsomely paneled East and West Conference Rooms. Classical chamber music was expertly performed in both rooms by the Strolling Strings of the U.S. Army Band, under the direction of Sgt. Majors Stone and Day, adding greatly to the enjoyment of the reception. Guests dined by candlelight in the Great Hall of the Supreme Court. The Great Hall was lined by state flags, and a large American flag, suspended between the fluted marble columns, provided a fitting focal point. After dessert was served, guests were again serenaded by the Strolling Strings whose incomparable music has become a tradition at the Society's annual dinners.

Chief Justice Rehnquist addressed the gathering, his remarks directed to the work of the Society and its activities and noting Mr. Stanley's able leadership as President. He said that he had been informed that the Society was in excellent financial condition and then quipped that it was in such sound shape financially, that "there were rumors of a hostile takeover by a larger historical society." The Chief Justice ended his remarks on a more serious note by wishing the Society every success in the coming year.

The crowning pleasure of the evening was a concert by the U.S. Army Chorus under the direction of Major Gary F. Lamb. The group gave a short concert of musical numbers which included selections from popular music and Broadway shows and concluded with a moving performance of "The Battle Hymn of the Republic". The concert marked the conclusion of the annual meeting, and the end of a memorable evening.



Chief Justice Rehnquist addresses the Society's members at the thirteenth annual dinner in the Supreme Court's Great Hall.

Francis Scott Key: A Poet of Justice

"It was Key's misfortune to write 'The Star Spangled Banner'" remarked Baltimore attorney Richard Cleveland. When Francis Scott Key penned the verses that would become known as the Star Spangled Banner, he undoubtedly did not suspect that his fame would rest on this one accomplishment. In 1814, Key was already a successful and established attorney, well liked and respected by his colleagues. Key's achievements throughout his career included his appointment as United States Attorney for the District of Columbia three times, under two different Presidents. During his legal career he argued some 152 cases before the Supreme Court Bench. In his legal practice he represented such important institutions as large banks, the War Department and the General Land Office. His services were also utilized in defending two of the conspirators in the Aaron Burr conspiracy, as well as the folk hero Sam Houston. His persuasive and diplomatic powers led President Jackson to send him to Alabama in 1833 to negotiate a settlement with the Creek Indians; indeed his presence at the siege of Fort McHenry was the result of his attempts to secure the release of a United States citizen from a British warship. Despite this outstanding legal career, Key is frequently identified only as the man who wrote "The Star Spangled Banner."

Born in 1779 in Pipe Creek, Maryland on the estate known as Terra Rubra, Francis Scott Key was educated at St. John's College in Annapolis. He decided to pursue a legal career after he completed school and studied with his uncle, Philip Barton Key, at his law firm in Annapolis. Key's father, John Ross Key, was an Associate Justice of the Fifth Judicial District of Maryland, and hence the younger Key's interest in the law seemed only natural. While he was a student in Annapolis, Key met Roger Brooke Taney (later Chief Justice Taney), another law student, and they became friends. One of the fruits of that friendship was the marriage of Key's sister, Anne Phoebe Charlton Key, to Roger Taney on January 7, 1806.

Key completed his studies with his uncle and in 1800, at the age of twenty-one, was admitted to the Frederick County Bar. He decided to start his practice in Frederick Town where his father was still serving as an Associate Judge and it was in Frederick that he married Miss Mary Tayloe Lloyd. Key's uncle Philip moved his practice from Annapolis to Georgetown where he prospered and where, in 1805, he served as counsel in the impeachment trial of Samuel Chase. Later in 1805, Philip Key decided he would like to retire if he could find someone to take his practice. It was probably not too difficult to entice Frank (as Francis was known to his friends) to fill this role, and in late 1805, at the age of twenty-six, he moved to Georgetown with his family to take over the practice.

In 1805, Georgetown was a prosperous community of approximately 4,000 persons. Key purchased a home in the heart of the city on the south side of Bridge Street (now known as M Street). Nine of the Key's eleven children were born in this house. Georgetown was a busy port in 1805 and a major terminus on the stagecoach routes. Moreover, it could boast of several important organizations

such as Georgetown College, founded in 1795, with approximately 200 students, and perhaps more important to Key's career, the Bank of Columbia, with its capital of one million dollars.

Little more than a year after moving to Georgetown, Key appeared for the first time before the Supreme Court of the United States in a habeas corpus hearing for two individuals charged with treason as accomplices of Aaron Burr. The two defendants, Dr. Justus Erick Bollman and Samuel Swartwout, had served as couriers between Burr and General Wilkinson in the Spring of 1806 in the so-called Mexican conspiracy. General Wilkinson subsequently turned against Burr, and in the guise of patriotism denounced his former associate and informed the federal government of his plans.

Bollman had already figured prominently in the attempt to rescue General Lafayette from



Though his present day fame rests almost exclusively upon having written the National Anthem, Francis Scott Key was a highly respected advocate in his day, having argued some 152 cases before the Supreme Court during his legal career.



Two of Francis Scott Key's clients, Dr. Justus Erick Bollman and Samuel Swartwout, were charged with treason, accused of carrying messages between two of the conspirators in the so-called Mexican conspiracy, General James Wilkinson (above left) and Aaron Burr (above right).

a dungeon in Olmutz. After the American Revolution, Lafayette had returned to France where he was eventually appointed commander of the militia after the fall of the Bastille. His popularity waned, and he was relieved of his army command after the fall of the monarchy in 1792. He fled France to Austria where he was imprisoned in Olmutz. After months of planning, Bollman and another American, Francis Huger of Charleston, succeeded in freeing Lafayette. His freedom was short-lived however, and he was soon recaptured and returned to solitary confinement where he remained until 1797 when Napoleon demanded that the Austrians release him.

As suspects in the Burr conspiracy, Bollman and Swartwout were detained by the military authorities, denied counsel and sent by warship from New Orleans to Baltimore, a journey of some two thousand miles. They were finally transferred to Washington where they were imprisoned in a military prison at the Marine Barracks while President Jefferson decided what steps to take. When the allegations against Burr and his conspirators were made public, emotions ran high and in a strongly partisan action, the Senate passed a motion directed against the conspirators suspending the right of habeas corpus in cases of treason. The House rejected the motion, and the prisoners were finally prosecuted in the Circuit Court of the District of Columbia.

The bench of the Circuit Court of the District of Columbia consisted of three individuals, Nicholas Fitzhugh and Allen B. Duckett, both Jeffersonian Republicans, and William Cranch, a Federalist. Perhaps not surprisingly in view of the strong partisan feelings of the time, the Court split in its judgment. The two Jeffersonians voted to commit the accused to prison to await trial for treason, and Judge Cranch dissented. The dissenter served on



William Cranch (above) was the only Federalist among the three Circuit Judges who considered Key's motion for a writ of habeas corpus on behalf of his two clients charged with treason. When the judges split, apparently along party lines, Cranch cast the lone dissent.

the Circuit Court for 54 years, fifty of those years as Chief Judge. During his tenure on the Bench he also edited and published nine volumes of Supreme Court opinions covering a 15-year period, including the volume which reported the Supreme Court's judgment on *Ex Parte Bollman* and *Swartwout*.

Counsel for Bollman and Swartwout, Charles Lee and Robert Harper, determined to apply to the Supreme Court for a writ of habeas corpus. On February 10, 1807 an application for a writ of habeas corpus for Bollman and Swartwout was filed with the Court. Francis Scott Key was admitted to the Supreme Court Bar on the same day.

The Court heard arguments on the application and Chief Justice Marshall delivered the opinion of the Court on February 13th that the Supreme Court did have jurisdiction to issue the writ of habeas corpus, citing the fourteenth section of the Judiciary Act which granted courts of the United States the power "to issue writs of scire facias, habeas corpus, and all other writs, not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions. . . ." Marshall addressed a number of other legal points, but finally concluded that the Court had jurisdiction in this case because:

"that [function] which the court is now asked to exercise is clearly appellate. It is the revision of a decision of an inferior court, by which a citizen has been committed to jail. . . . The decision that the individual shall be imprisoned must always precede the application for a writ of habeas corpus, and this writ must always be for the purpose of revising that decision, and therefore appellate in its nature. . . . If at any time the public safety should require the suspension of the powers vested by this act in the courts of the United States, it is for the legislature to say so. That question depends on political considerations, on which the legislature is to decide. Until the legislative will be expressed, this court can only see its duty, and must obey the laws. The motion, therefore, must be granted."

The decision being made that the Court had jurisdiction, counsel for the defense moved that the prisoners should be discharged or at least admitted to bail. Mr. Lee also alleged that no probable cause for the charge of treason had been shown except an intent to start an expedition against Mexico in the event of war between the United States and Spain.

It was at this juncture that Key first entered the case as counsel for the defendants. He advanced the view that under the Constitution, there was no such thing as "constructive treason" saying the Constitution "declares that treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. An adherence to rebels is not an adherence to an enemy, within the meaning of the Constitution. Hence if the prisoners are guilty, it must be of levying war against the United States. . . . By using the word "only" the Constitution meant to take away all pretense of constructive treason. Every man is to answer for his own acts only. . . . And what reason can be given why there should not be the same distinction between principal and accessory in treason, as in other crimes." Key argued further that if the accused were to be found guilty it must be proved first "that war has been levied, and second, that the prisoners are confederates in that war."

The next point Key attacked was the admissibility of General Wilkinson's affidavits, saying there was no proof that General Wilkinson had made the statement under oath, nor indeed, that the magistrate had taken the appropriate oaths of his office. He raised the larger question of whether an affidavit taken by one

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Francis Scott Key (continued from page five)

magistrate could be taken as evidence by another magistrate.

He further questioned the value of the affidavits by maintaining that even if they were admissible they "do not show any action of treason. They prove no assemblage of men, no military array." He continued that the affidavits of Meade and Wilson (two officers involved in the removal of Bollman and Swartwout to Washington) "relate only to rumours derived from General Wilkinson, whose business it was, if he could get such rumours there by no other means, to create them himself." In this comment Key was alluding to the fact that Gen. Wilkinson based his accusations on what he told the Court the letters said. The Court was never provided the original letters from Colonel Burr as evidence.

He also pointed out that "the territory of New Orleans, if it was to be revolutionized, might be revolutionized without levying war against the United States. There is no evidence that the prisoners knew that Col. Burr had any treasonable projects in view. Even if he had such views, he might have held out to them, as he did to others, only the Spanish expedition."

After two more days of argument, Chief Justice Marshall stated that the Court had difficulty with two points regarding the case:

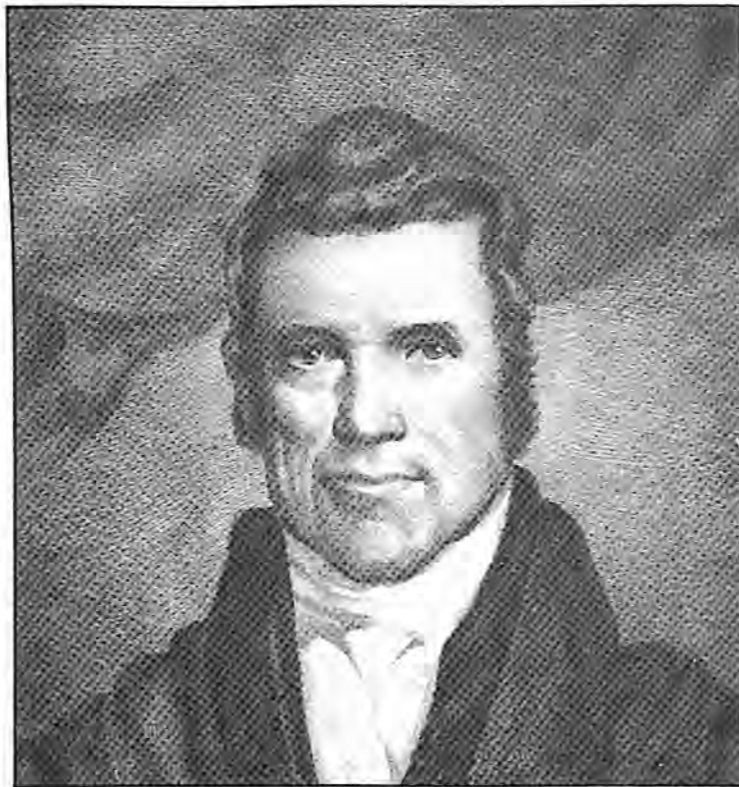
1. whether the affidavit of Gen. Wilkinson was admissible evidence at this stage;
2. if it was admissible, could the Court consider as evidence his statement as to the contents of letters it had never seen in their original form.

After posing the questions, Chief Justice Marshall said, "if counsel had any authorities on these points" the Court would like to hear them.

The next day, neither Attorney General Rodney nor Francis Scott Key were able to produce an American precedent on the issue, but Key cited a case from the Court of the Kings Bench. While admitting that the English Court had been evenly divided, he quoted the Chief Justice of the English Court who maintained that the earlier evidence was not admissible as it had not been obtained for the same purpose and should therefore be considered extrajudicial. Key maintained that this reasoning should also apply in the case of Bollman and Swartwout.

Chief Justice Marshall delivered the opinion of the Court on February 21. Marshall prefaced the actual judgment by making general remarks about what constitutes treason and it is clear from his remarks that he was very aware that the Court was setting precedent in this ruling. Although the full complement of the Court was six members, only four members, Chief Justice Marshall, and Associate Justices Samuel Chase, Bushrod Washington and William Johnson participated in the case. Justice Cushing was ill and did not attend for the entire term and Brockholst Livingston, who had received an interim appointment to replace William Paterson, deceased, had not yet taken his place on the bench.

Marshall's opinion next addressed the points of law raised by counsel. He announced that the four members of the Court had divided evenly regarding the admissibility of the affidavit from Wilkinson. Two justices felt that "as such testimony delivered in the presence of the prisoner on his trial would be totally inadmissible, neither can it be considered as a foundation for commit-



Chief Justice John Marshall (above) delivered the Court's decision in the Bollman and Swartwout cases on February 21, 1807. Just a month later, as part of his circuit duties, Marshall presided over the trial of Aaron Burr in Richmond.

ment." The other two justices were of the opinion that since this was just an inquiry and not a trial, that "an affidavit stating the general purport of a letter may be read, particularly where the person in possession of it is at too great a distance to admit of its being obtained, and that a commitment may be founded on it." The next paragraph of the opinion begins, "Under this embarrassment", indicating Marshall's dismay that the Court did not have a majority ruling on this point.

Unable to determine the admissibility of the affidavit, the Court then turned its attention to the content of the affidavit itself and "whether, if admitted, it contains matter which would justify the commitment of the prisoners at the bar on the charge of treason." It was the decision of the majority of the Court that there was not sufficient evidence to justify committing Swartwout to trial on the charge of treason, and that there was even less testimony against Erick Bollman. Marshall continued that while it was clear that the prisoners had been engaged in "a most culpable enterprize against the dominions of a power at peace with the United States. . . the crime with which the prisoners stand charged has not been committed, [so] the court can only direct them to be discharged. . . But that no part of this crime was committed in the district of Columbia is apparent. It is therefore the unanimous opinion of the court that they cannot be tried in this district."

Marshall added that since this was simply an inquiry which did not decide upon guilt, the ruling "does not acquit them from the offence which there is probable cause for supposing they have committed," adding that proper authorities could upon receipt of "less exceptionable testimony . . . institute fresh proceedings against them."

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Membership Update

The following members have joined the Society between March 1, 1988 and June 15, 1988.

Alabama

Charles D. Cole, Birmingham

Arizona

Crane McClellan, Phoenix

California

Robert Boochever, Pasadena
Kingsley R. Browne, San Francisco
J. Hart Clinton, San Mateo
Allison Dunham, Pomona
Northcutt Ely, Redlands
A. T. Goodwin, Pasadena
Victor B. Levit, San Francisco
Bruce G. McGregor, Los Angeles
Sharon O'Grady, San Francisco
Wayne L. Peterson, San Diego
Stephen L. Rosen, San Francisco
J. Ronald Trost, Los Angeles
Gerald F. Uelmen, Santa Clara

Colorado

George W. Bermant, Denver
Jack Paul "Joe" Crill, Campo

Connecticut

J. Lee Rankin, Weston
C. Dickerman Williams, Hamden

District of Columbia

Noel J. Augustyn
Mortimer M. Caplin
Wayne Coy Jr.
Joseph John Jablonski Jr.
David J. McCarthy Jr.
L. Clair Nelson
Louis F. Oberdorfer
Carter G. Phillips
Harvey L. Pitt
Debra Premysler
Victoria Schuck
Herman Schwartz
Randall W. Scott
Nicole K. Seligman
Wilcomb E. Washburn
Richard E. Wiley

Delaware

S. Samuel Arsht, Wilmington

Florida

Joseph P. Klock Jr., Miami

Idaho

J. Blaine Anderson, Boise

Illinois

Patterson Carl Meuth, Libertyville
John J. Sullivan, Chicago

Indiana

Robert L. Miller Jr., South Bend

Louisiana

Rutledge C. Clement Jr., New Orleans
James L. Dennis, New Orleans
Lawrence E. Donohoe Jr., Lafayette
John R. Kramer, New Orleans
Jesse D. McDonald, Monroe
LeDoux R. Provosty Jr., Alexandria

Massachusetts

Edwin J. Carr, Newton
Frederick D. Herberich, Winchester
George C. Keady Jr., Longmeadow
Douglas P. Woodlock, Boston

Maryland

John F. Davis, Bethesda

Michigan

William D. Cohan, Grosse Pointe Farms
Peter J. Lucido, St. Clair Shores

Minnesota

Carol Chomsky, Minneapolis
Mark Edward Utz, Minneapolis

Missouri

Joe E. Covington, Columbia
William B. Fisch, Columbia
Jerry Rardin, Kansas City

Mississippi

Sherwood W. Wise, Jackson

North Carolina

Forrest A. Hainline Jr., Flat Rock

New Jersey

Michael A. Maldony Jr., Edison

The following members were inadvertently omitted from the 1987 Annual Report. An asterisk after the member's name indicates Contributing Membership (\$100-999 per year). A double-plus sign indicates Life Membership (\$5,000 or more).

Stephen Ailes *, Washington, DC
Terence G. Cady, Berkeley, CA
Patrick and Anna Cudahy Fund ++,
Milwaukee, WI
William M. Drennan, Washington, DC
William J. Harte *, Chicago, IL
Rita Doherty Hornyak, Oakton, VA

New Mexico

Arthur A. Garcia, Albuquerque

New York

Robert F. Brodegaard, New York
Peter Megargee Brown, New York
Ronald DeKoven, New York
Eugene C. Gerhart, Binghamton
Ralph A. Halpern, Buffalo
E. Nobles Lowe, Carmel
David H. Marks, New York
James S. Portnoy, New York
Emery McClellan Schweig, Larchmont

Pennsylvania

Frank Goodman, Philadelphia
Herbert B. Newberg, Philadelphia

Rhode Island

Florence K. Murray, Providence

South Carolina

Frank F. Espey, Greenville

Tennessee

Walter P. Armstrong Jr., Memphis
Charles O. Galvin, Nashville
Gilbert S. Merritt, Nashville

Texas

Thomas E. Baker, Lubbock
Jefferey G. Barcak, Houston
Richard Frankoff, Houston
Lloyd Lochridge, Austin
Nancy Arnole Nasher, Dallas
George P. Parker Jr., San Antonio

Virginia

Harry L. Carrico, Richmond
William D. Dolan III, McLean
Kathryn Elizabeth Foster, Bassett
Mark H. Woolsey, Arlington

U.S. Virgin Islands

Henry L. Feuerzeig, St. Thomas

Atwater Kent Foundation ++,
Washington, DC
William H. McDonald, Springfield, MO
Thomas M. Thompson, Pittsburgh, PA
Mrs. Lillian Scheffres Turner ++,
Kenwood, MD

A Closer Look at the Bronze Courtroom Gates

by Priscilla Goodwin

The bronzework is one of the Supreme Court building's most beautiful features. The ten sets of bronze gates in the Courtroom are prime examples of the high quality of the bronzework. Although the Courtroom gates are functional objects, like the bronze window and door frames, elevator doors and frames, and the front doors, the cumulative decorative effect of the bronzework is an important part of the building's ornamentation.

The purpose of the gates is to create visual boundaries between the courtroom proper and the corridors on each side of the Chamber. They are set into five bays formed by four columns, made of Siena Old Convent marble from Italy, on each side of the Courtroom. The gates are tall (eight feet), and their hinges are hidden, so they resemble screens more than simple gates. The open, lacy pattern of the gates allows light to enter from the courtyards on either side of the Courtroom. Originally, more light came in from the courtyards than it does currently because there were no draperies hanging on the sides. The red velvet draperies were added soon after the Court moved into the new building to improve the room's acoustics.

Each set of gates has two main panels, which are the doors. The panels are constructed in a grid format made up of twelve 16"

by 11" rectangles and twelve 11" by 11" squares. In the rectangles the pattern is formed by intersecting arches with acorns and oak leaves tucked between them. In the squares is a stylized star with a small rosette in its center. The doors are attached to a frame covered with a vertical strip of decorative motifs (see figure 1). A torch, an eagle's head, scales, a lion's head, tablets, two leaping dolphins, a Roman helmet, a tripod of flame, and a footed urn are interspersed with Neoclassical foliate elements. Small panels fill the space between frame and column.



Figure 2.

into the building's ornamentation. With these ideas in mind, an examination of the bronze Courtroom gates will shed light on the building as a whole.

Completed in 1935, the Supreme Court building was built during a revival of Neoclassical architecture in Washington. Cass Gilbert's philosophy on design was that a "building's principal claim to beauty lies in its proportions, not in its adornment." Visitors to the Supreme Court are struck first by the towering facade and the impressive spaces in the Great Hall and Courtroom. The ornamentation does not demand the viewer's immediate attention, but when one notices the carvings or bronzework in the building's interior it is apparent that great care was taken with the ornamentation as well as with the overall form of the building.

In the design process Gilbert concerned himself chiefly with the proportion of the Supreme Court building. He would sketch the rough outlines of any ornamentation and rely on artisans to refine the details. Gilbert, in a letter to Robert Aitken, the sculptor who created the West pediment, wrote "I don't care very much what the figures mean. I assume of course that they may mean something or convey a certain symbolism - but what I do care about is the composition -- the design -- the arrangement..." In the case of the courtroom gates, the design was done by John Donnelly, and had the approval of Cass Gilbert.

John Donnelly was head of a company based in New York City and had worked with Cass Gilbert on other buildings and Donnelly was responsible for the models of all of the ornamentation in the building, most of which he also designed, whether the ornament was to be fashioned of wood, plaster, marble, or bronze. He and his associates also did much of the marble carving. Some of Donnelly's models are currently on display in the Supreme Court building. Noteworthy is the large model he did of the

anthemion on top of each frame and a pediment in the center composed of a shell and foliage.

The Courtroom gates exemplify three aspects of the architecture of the building as a whole: the design philosophy of Cass Gilbert, the architect; the care with which the building was constructed; and the symbolism incorporated



Figure 1.



Figure 3.



Figure 4.



Figure 5.

proposed building in 1929, now on display in the Northwest door area on the ground floor.

In May of 1932 Donnelly submitted a letter to Cass Gilbert listing the models he would be making for the building, an estimate of the number of weeks of work to make each model, and their cost. He estimated that the gates in the courtroom would take four weeks and cost \$350.00 to design and model.

Once John Donnelly had designed the Courtroom gates and created models the actual casting of the gates was done by the General Bronze Corporation based in Long Island City, New York. The fabrication of the gates, like the rest of the building, was done to high standards. More than once during the building's construction Cass Gilbert insisted that work be redone.

The General Bronze Corporation was a subcontractor of the George A. Fuller Company, the company which erected the superstructure for the Supreme Court. General Bronze supplied other bronzework for the interior of the building, from the elevator doors and frames to windows, stair rails, ventilation grills, door frames, lighting fixtures, fireplace andirons, and gates for four corridors on the ground floor. Bids for the courtroom gates were taken when the building was being furnished, and as is standard in government construction, the contract was awarded to the lowest bidder. General Bronze bid \$1,940.00 for the work of making the handrail and gates for the Courtroom.

The specifications for the construction of the building state that cast bronze is to be used in:

all ornamental members of every nature throughout . . . of composition to accurately match drawn or rolled bronze when used in conjunction with same; cast bronze shall be composed as follows:

Copper - not less than 88% by weight
Zinc - not more than 7% by weight
Tin - not less than 4% by weight
Lead - not more than 1% by weight

The fineness of detail in the courtroom gates testifies to the care with which they were made. Castings were made from "metal patterns in finest French sand molds... of fine texture with sharp lines, accurate profiles, and shall faithfully reproduce all ornamentation, including undercuts, on the approved models." After casting, the gates were finished by hand chasing.

The symbolism of the gates parallels the symbolism in other ornamentation in the building. There are two types of ornamental motifs: elements taken from the Neoclassical vocabulary, and elements symbolic of the building's function as the home of the Supreme Court.

In the gates, the panels include acorns and oak leaves (see figure 2), and rosettes. The acorns and oak leaves symbolize strength, like the strength of an oak tree. Acorns and oak leaves can also be seen on the elevator doors, along with leaves of other American trees. The rosettes are a feature seen throughout the building, primarily in molded plaster on ceilings, but also carved in wood and marble. Rosettes are a characteristic of the Neoclassic style. In ancient Greek architecture the wooden, coffered ceilings had a joint where each coffer met, and Classical builders covered each joint with a rosette. In the Supreme Court Building the rosettes do not cover a joint, since the building is constructed on a steel frame.

At the top of each door frame is a torch (figure 3), which symbolizes the light of truth. A torch can also be seen in the West courtroom frieze, where the seated figure representing Truth holds a torch and a mirror. Below the torch is an eagle's head (figure 4), symbolizing air, one of the four elements of nature. The four elements of nature are a Neoclassical motif, and they are used on the base of the flagpoles on the front plaza. When an eagle's head is found with other symbols of the elements it represents air, but when it is found on its own, as it is in the capitals of the columns on the West portico, in the ceiling in front of the Courtroom

--continued on next page

Bronze Gates (continued from page nine)

entrance, and in the East Courtroom frieze, it is a symbol of our nation.

Scales (figure 5) are the next ornamental component in the door frame. They are, of course, emblematic of the scales of justice signifying the equal measure with which justice is administered. The scales of justice can also be found in the elevator door frames, in the West courtroom frieze held by the figure of Divine Inspiration, on the tieback holders for the draperies in the Courtroom, on the lamp posts on the front plaza, and as part of "Contemplation of Justice," where they are held by the small figure of Blind Justice.

Below the scales is the second of the elements of nature: a lion's head symbolizing earth (figure 6). When a lion's head is found on its own, as it is on the cornice circling the exterior of the building or on the fountain of the East facade, it represents strength. Following the lion's head are two tablets with the Roman numerals one through ten inscribed upon them, symbolic of the ten commandments. They represent written law in the abstract,



Figure 6.



Figure 7.

not each individual commandment. The ten commandments are also found in the Courtroom frieze over the bench and in the carving over the arches in the library.

Two leaping dolphins represent water (figure 7), and below them is an ancient Roman helmet. Classical armament represents strength and courage, and there are numerous examples of this motif in the building. The most common type of armament used is the sword, and some of the examples in the building are on the flagpole bases, in the statue "Executor of Law" on the front plaza, and in the West courtroom frieze where the sword is held by Justice. The fourth element of nature is the tripod of flame to represent fire. The series of motif on the door frame is concluded with a footed urn, a popular Neoclassical symbol.

Three of the elements of nature have letters from the Greek alphabet inscribed upon them. The eagle has a nu, the dolphins have an omicron and a sigma, and the tripod of flame has a sigma and an alpha. Probably included to enhance the symbolism of the elements of nature, the meaning of the letters warrants further study.

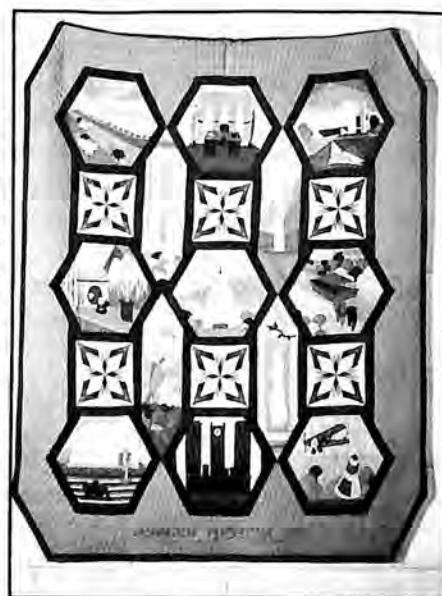
The bronze gates are only one of the many special architectural features of the Supreme Court building. It is fortunate that the people who planned and built this structure cared about quality in design, materials, and craftsmanship. In this brief look at the Courtroom gates we have seen Cass Gilbert's emphasis on the proportion of the Supreme Court building, the care with which the building was made, and the types of symbols that appear in the ornamentation.

Members of the Supreme Court Historical Society interested in learning more about the building can participate in an hour-long architectural tour given by the Curator's office. These tours examine the exterior and interior of the building and discuss the roles of Chief Justice Taft and Cass Gilbert in planning and designing the building, how the function of the building relates to its form, and the use of symbolism in the ornamentation.

Court Exhibits Quilt Depicting Washington Area

The Capitol Quilters, a group of nine women under the direction of Mary Coyne, was established in October 1980 to plan and complete a quilt featuring familiar sights of Washington, D.C. Months of research went into the selection and design of Washington landmarks chosen to be depicted. One of the major challenges was to reduce the scenes to geometric form without producing eight or ten look-alike representations of white marble, Greek-columned temples. After over a year of concentrated effort, "Washington Perspective 1982" was completed. The quilt has appeared in a calendar, several magazines and a quilt book. It is now on display in the Supreme Court building.

The Court Room of the Supreme Court building (bottom row, center) is just one on the scenes from the Nation's Capital depicted in a quilt entitled "Washington Perspective 1982" which is on display in the Supreme Court building. The Executive Branch is represented by the Oval Office (top row, center panel) while the Capitol building (center panel, center row) represents the Legislative Branch of government. Various monuments and museums around Washington appear in other panels as well as the National Zoo and the C. & O. Canal, portions of which have been restored in Washington over 150 years after the Canal ceased operation.



Foundation Plans Permanent Memorial for John Marshall

Since 1911, The Virginia Bar Association has been a strong supporter of the John Marshall house in Richmond, Virginia and has been joined in this commitment by local bar associations, The Association for the Preservation of Virginia Antiquities, private citizens and the Commonwealth of Virginia.

In 1988, the Virginia Bar Association observes both its own Centennial and the Bicentennial of Virginia's ratification of the U.S. Constitution. To commemorate these events, the Association has undertaken a leadership role with The John Marshall Foundation in its efforts to support the restoration, preservation and interpretation of the residence of Chief Justice John Marshall as a permanent memorial, providing educational and public interest programs in the fields of law, government, history and public affairs. For these purposes, The John Marshall Foundation was established last year.

Commenting on the Foundation's primary goals, President Andrew P. Miller of Alexandria, Virginia said: "The first goal is to preserve the fabric of the John Marshall House and to underwrite its being kept open to the public. The second is to support the continuing interpretation of the legacy of the former Chief Justice through educational projects. The achievement of these goals will entail significant effort, not only on the part of the Foundation, but also by the legal community throughout the nation and others interested in our constitutional heritage."

The Foundation's board of directors has approved a five-year restoration plan recommended by architects and structural engineers. Among the renovations planned are essential roof repairs, correction of drainage problems, reinforcement of the stairwell support system and an orientation area with exhibits and audio-visual presentations.

The Marshall house, home of the former Chief Justice for nearly half a century, has undergone remarkably few changes since his ownership, and still maintains substantially its original appearance. After Marshall's death in 1835, the House remained in the possession of his descendants until the early 1900's. In 1911, The Association for the Preservation of Virginia Antiquities was entrusted with the preservation of this nationally significant historic home.

Completed in 1790, the house contains the largest and finest collection of Marshall's furnishings and memorabilia in existence. Among the most significant artifacts of the collection are Marshall's robes which he wore as Chief Justice of the United States between 1801 and 1835. Dating from 1740 to 1835, the collection includes furniture, porcelain, medals, textiles, prints, toys, books and Marshall family papers.

The present interpretation of the house to the period of Marshall's residence centers on these and other Marshall-related objects. Many have been returned to the site through generous donations and loans over the past 80 years by the Chief Justice's descendants, in whose families these items have been handed down and revered. In variety and scope, the

objects illuminate virtually all aspects of Marshall's life, including his legal career, his family and his social life. Most Marshall possessions preserved at the house are domestic artifacts of various types from the late 18th and early 19th centuries which would have been used on a daily basis by members of his family.

Approximately 90 percent of the 453 artifacts in the house are original to the residence. The remaining 10 percent of the acquisitions have been carefully matched with descriptions in John Marshall's account books of 1783 to 1797, city tax records of the period, and diaries, letters and accounts written by Marshall's family and his contemporaries.

The house, a major component of the Court End Tour in Richmond, is becoming an attraction of national interest, second only to Virginia's Capitol. With Capitol Square as its center, Court End contains seven National Historic Landmarks and twelve buildings on the National Register of Historic Places.

Many of the visitors to the Marshall house are grade-school and high-school students. To the extent of staff capabilities, tours and lectures are offered and tailored to the requests of teachers. Special lectures are also conducted for colleges and historical organizations and the House is used frequently for small group seminars sponsored by the legal profession.

"More than anything else," Andrew Miller concluded, "we view this Foundation's commitment, and its ultimate success to be a demonstration of how citizens feel about the importance of a permanent memorial to John Marshall. We do sincerely believe that what we are doing is something that is in the public interest which will benefit all Americans."



The John Marshall house in Richmond, Virginia

Francis Scott Key *(continued from page six)*

This decision became an important part of the trial of Aaron Burr held in Richmond in March of 1807 where the issue of what constitutes treason was again a focal point. Chief Justice Marshall presided over this trial as part of his circuit duties. In a highly sensational trial which was strongly flavored by political considerations, Burr was finally acquitted of the charges. A footnote appears at 8 *US Reports* 125 noting that the opinion of Chief Justice Marshall upon the trial of Col. Burr appears as Appendix B in this volume because it "elucidates and explains some passages in this opinion which were supposed to be in some degree doubtful."

After the trial, Key returned to his legal practice in Georgetown. During the next few years, Key represented a variety of clients. His cases before the Supreme Court included a number of prize ship cases, as well as a number of cases involving

Washington area banks. The complications of the war with the British eventually intruded upon the normal functions of Washington, and in the spring of 1814, the courts adjourned because of the impending danger, and Key's legal practice was effectively halted. Key volunteered for and served briefly in the Georgetown Light Artillery.

The events of the early spring led people to believe that the conflict with Great Britain might be brought to a peaceful conclusion, but the surrender of Napoleon released troops and marines to supplement the forces in Canada and the United States. The British officers, armed with renewed forces, determined to attack Washington, D.C. And on August 24, 1814, Key rode across the fields in the area of Bladensburg trying to prepare for the advance of the British troops.

(The second half of this article will appear in the next issue of the Quarterly.)

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