



Quarterly

Marble Bust of Retired Chief Justice Warren E. Burger Unveiled

On June 3, 1988, the portrait bust of Chief Justice Warren E. Burger joined those of his predecessors on display in the Great Hall of the Supreme Court. The Society commissioned the artwork through the generosity of Society trustee, Obert C. Tanner. Although the bust was completed several years ago, June 3 marked the date of its official installation in the Great Hall. The occasion was observed by a short program and a reception.

The ceremony was attended by many of the current members of the Supreme Court, as well as former clerks to Chief Justice Burger, Society officers, and personal friends. Chief Justice William H. Rehnquist welcomed the guests to the unveiling and offered remarks in which he mentioned many of Chief Justice Burger's accomplishments and contributions to the Supreme Court. At the conclusion of his remarks, Chief Justice Rehnquist introduced Justin A. Stanley, Esquire, President of the Society, who addressed the gathering.



This plastilene bust of Chief Justice Burger shows the life-like detail of the sculpture now displayed in the Supreme Court's Great Hall.

Mr. Stanley said that the Society was:

flattered to be part of these ceremonies. Perhaps that is particularly so because we have been the beneficiary of Chief Justice Burger's energy, practicality and wisdom. He was one of the founders of the Society, he has been the catalyst for its growth and for its developing role in preserving the history of the Court and, in addition, he is our much loved Honorary Chairman.

Through the generosity of one of our Trustees, Mr. Obert C.

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Left to right, Obert C. Tanner, whose generous donation funded the bust project, poses with retired Chief Justice Burger, Chief Justice Rehnquist and sculptor Walker C. Hancock during the unveiling ceremony.

A Letter From The President



Society President Justin A. Stanley

Despite the difficulties of scheduling meetings around summer vacations, the Society's standing committees have been very active during the past three months preparing a coordinated plan for the Society's future. Some committees have met several times already, while others are still getting organized. Along with many other members of the Executive Committee, I would like to see greater progress in some areas and the fulfillment of these expectations is largely dependent upon the respective committees and their ability to involve you and your fellow members in their activities.

Accordingly, I think it is appropriate and desirable for me to report on the various committees' progress to keep you abreast of what your Society is doing now, and what it is planning in the months ahead. I encourage you, as you read these brief reports, to consider ways you might become involved in one or more of the committees' activities.

Acquisitions Committee

The Acquisitions Committee, chaired by Patricia Collins Dwinell, last met on May 9, 1988. The Committee's purpose is to identify and acquire significant antiques and artifacts relating to the Court's history which the Society then places on loan to the Supreme Court for use in its educational displays and programs. The Committee is negotiating a permanent loan agreement with the United States Postal Service for printing plates of stamps USPS has printed commemorating various aspects of the Court's history. In the coming months the Committee will work closely with the Court Curator's office to identify portraits and busts the Court needs to complete its collection, and will also try to locate possible sources from which such artwork can be acquired. According to Court Curator Gail Galloway, several of the portraits of the early Justices now in the Court's collection are in need of replacement and she hopes the Society can be instrumental in either acquiring significant existing works, or in commissioning suitable quality replacements. The Committee has asked Ms. Galloway to prepare a list of items she thinks should be acquired which will be published in an upcoming Quarterly.

Budget and Finance Committee

The Budget and Finance Committee, chaired by Peter Knowles, held its most recent of several meetings this summer on August 3rd. The Committee has been working closely with both the Program Committee and the Special Gifts Committee to draft a budget for Fiscal Year 1989. A final draft of this budget, which will be presented to the Executive Committee in late October, calls for an expenditure on new programs of between

\$36,000 and \$50,000. A synopsis of the new programs under consideration appears below in my report on the Program Committee. Ultimately, the Budget and Finance Committee hopes to develop a longer-term financial plan for the Society encompassing approximately five years at a time.

The Budget and Finance Committee has also been charged with responsibility for reviewing the Society's current employee benefits package and anticipates presenting its recommendations on this matter also in October.

Program Committee

The Program Committee, chaired by J. Roderick Heller, III, held its most recent of several meetings this summer on July 8th at which its members discussed a draft report on the Committee's recommendations for criteria for reviewing new programs, proposals for a variety of programs the Society might wish to undertake and what the goals of those programs should be. A revised draft of this report was subsequently presented at the Executive Committee meeting on July 20th.

The Committee called for an expanded program of public information, historical preservation and support for worthwhile scholarly activities. Public information activities contemplated by the Committee could include publications complementary to *Equal Justice Under Law*, a collection of biographies of the Justices, and informational brochures to aid those touring the Supreme Court as well as persons who write in requesting such information. Preservation activities might include preparation of research guides to Court-related materials throughout the United States, development of an ongoing oral history project, organization of an historical office, and development of a catalog of photos in the Court Curator's collection as an aid to photo researchers interested in the Court's history. Scholarly activities might include the establishment of an annual book or monograph prize, endowment of particular studies, funding assistance for selected publications on Court-related subjects, development of a lecture series or symposia and the establishment of a fellows program. As reported above, the proposed budget for Fiscal Year 1989 includes substantial support for new programs and in the months ahead the Program Committee will be developing recommendations for specific projects to undertake in the coming year.

THE SUPREME COURT HISTORICAL SOCIETY

Quarterly

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Publications Committee

The Publications Committee, chaired by Kenneth S. Geller, holds regular quarterly meetings, the last of which was held in early October. The Committee oversees all of the Society's publications efforts including their selection, content and marketing. Much of their effort in recent meetings has been devoted to putting the *Yearbook* back on schedule. Currently it is approximately nine months late and the major cause of the delay has been a shortage of suitable articles for publication. The Committee has taken steps to alleviate this problem for the 1988 edition by issuing a "call for papers" in a number of professional journals as well as through over 1,000 direct appeals to scholars. If you would like to contribute a suitable article for consideration, or know of someone who would, contact Mr. Geller at (202) 778-0613 or David Pride at the Society's headquarters at (202) 543-0400 for details.

Membership Committee

The Membership Committee, chaired by John Shepherd, will hold an organizational meeting in Washington on September

ber 30, 1988. The Committee will be filling vacancies among the Society's State Membership Chairmen, and planning this year's membership development effort. The Committee would welcome suggestions for membership development as well as volunteers to assist in local and regional recruiting. Contact: David Pride in the Society's central office at (202) 543-0400.

Special Gifts Committee

The Special Gifts Committee, chaired by Vincent C. Burke, Jr., last met July 19th to plan this year's capital campaign. The Committee is responsible for securing funding for the Society's endowment as well as for specific educational programs, publications and historical research. Among its most recent successes was a generous pledge by Dwight Opperman of West Publishing Company who has promised his company's support in publishing a collection of biographies of the Justices. The Committee's goal for this year is somewhat over \$180,000 according to the proposed budget for Fiscal Year 1989 and Committee Chairman Burke has indicated he would appreciate assistance from the membership in soliciting law firms, corporations and private donors in their respective areas. For more information, contact Mr. Burke at (202) 429-3000 or myself at (312) 701-7021.

Bust Installation (continued from page one)

Tanner of Salt Lake City, Utah, we were able to commission the bust of Chief Justice Burger. The sculptor who did the bust is Walker Hancock of Gloucester, Massachusetts. Mr. Hancock is one of our Nation's best known sculptors. A number of his works, including that of James Madison, and of Christ in Majesty are here in the District. Among these is the bust of Chief Justice Earl Warren, which of course is in the Great Hall.

Mr. Stanley then called upon Mr. Hancock and Mr. Tanner for recognition, thanking them for their contributions that made it possible to place this bust in the Nation's highest Court. At the conclusion of his remarks, Mr. Stanley called upon Chief Justice and Mrs. Burger's granddaughters, Lindsey and Andrea Burger, who unveiled the bust.

Unlike many of the statues and busts of statesmen on display in Washington, the Burger sculpture was, of course, sculpted from life. This was made possible through the generosity of Mr. Tanner who provided the funds for the execution of the bust. Mr. Hancock was then commissioned to execute the marble bust.

Mr. Hancock did much of his work in one of the conference rooms of the Supreme Court building in the summer of 1982. Working from photographs and measurements, Mr. Hancock proceeded to model the bust one-tenth larger than life size. Chief Justice Burger posed as often as his demanding schedule would allow and these sittings were of invaluable assistance to Mr. Hancock.

In addition to the marble portrait bust on display in the Great Hall, two bronze heads and four bronze busts were cast. These bronze castings were funded through the efforts of Society Trustee, Dwight D. Opperman and The West Publishing Com-



Chief Justice Burger's granddaughters Lindsey and Andrea Burger unveil their grandfather's bust at the installation ceremony.

pany. Two bronze pieces are on display in St. Paul, Minnesota; one in the State Capitol, the other in the William Mitchell College of Law. In addition, one bronze bust is on display in the National Portrait Gallery.

Francis Scott Key: Part Two

Editor's Note: This is the second in a two-part series on Francis Scott Key. The first half of this article was published in Volume IX, Number 2 of the Quarterly.

Although Francis Scott Key had been opposed to the declaration of war against Great Britain, he volunteered for service in the Georgetown militia to defend his home. On the fateful day of August 24, 1814 British troops left a temporary base in Upper Marlboro, where the commanding officers had encamped on the property of Polly Key's sister and her husband, on their way to Washington. The British troops encountered the American forces in Bladensburg. Key was present at the encounter in which the militia and regular army units were quickly routed.

The remnants of the U.S. forces fled back to Washington, hastily burning the Navy yard, arsenals and supplies on their way. They finally retreated across Rock Creek burning the bridges behind them, and sought shelter in "the heights of Georgetown", while the British troops marched unopposed into the Capital. There the British sought revenge for the destruction of Canadian government buildings by U.S. troops. The casualties of their revenge included "the Capitol, the arsenal, the dock-yard, Treasury, War Office, President's palace, rope-walk, and the great bridge across the Potowmack, in the dock-yard a frigate nearly ready to be launched, and a sloop of war." Their purposes fulfilled, the British marched back through Maryland to rejoin the fleet.

Key retreated to Georgetown with the remnants of the U.S. forces where he rejoined his family. Several days later he received an urgent message that his services were needed on behalf of Dr. William Beanes of Upper Marlboro who was being held prisoner on a British warship near Baltimore. Dr. Beanes had been captured because he had caused the arrest of three British soldiers who had wandered onto his property after the sack of Washington. When the British had originally arrived in the Upper Marlboro area, they had promised the Maryland citizens fair treatment if they would pledge not to interfere with military activities. Dr. Beanes had taken such a pledge, and hence his action against the British soldiers was considered a breach of his promise of nonintervention.

Key was well acquainted with Dr. Beanes and decided to undertake the task of pleading with the British for Beane's release. Key called upon President Madison, seeking official sanction for his mission. Madison authorized Key to act as an official emissary under a flag of truce. Key was then given a letter from the American Commissary General of Prisoners, and was accompanied on his mission by one of the Commissary's officers, John Skinner.

Key and Skinner sailed on a cartel ship that was used for communication with the British and which flew a white flag. It was two days before they found the British fleet near the mouth of the Potomac. There Key and Skinner were taken aboard the flagship, the *Tonnant* where they presented the letter from the Commissary General of Prisoners, but the officers were not inclined to release Dr. Beanes. In further defense of Dr. Beanes, Skinner produced a packet of letters written by British soldiers who had been wounded during the battle of Bladensburg and subsequently treated by Dr. Beanes. In these letters, the soldiers



Francis Scott Key

spoke highly of Dr. Beanes' medical assistance and of his kindness towards them. Key also pointed out Dr. Beanes advanced age of 65, and his good standing in the community and professional reputation. The British finally consented to release the doctor.

The British were planning to attack Baltimore in an effort to eradicate the privateers who had plagued them for the duration of the war. As a result, Key and Skinner were detained on several ships of the British fleet while preparations for the attack were completed. On September 10, Key, Skinner and Dr. Beanes were sent to the American cartel ship, but were placed under a Marine guard to prevent them from giving warning of the attack. The cartel ship sailed with the fleet to Fort McHenry where it was finally anchored only a few miles from the gunboats. There Key witnessed the bombardment of Fort McHenry from the deck of the cartel ship and began composing the poem which became known as "The Star Spangled Banner."

After the excitement of the war, Key gathered his family together and returned to Georgetown to resume his practice. Key was involved in many cases which pertained to slavery. Although he was a slave owner himself, Key was strongly opposed to slavery and he worked not only to prevent its expansion, but to eradicate the institution altogether. He was adamantly opposed to slavery on moral grounds, but he was also aware of the complexities of the political and economic factors

as well. He frequently defended slaves in court without receiving compensation, and he was known as a protector of the blacks. One of his contemporaries said: "He was their standing gratuitous advocate in courts of justice, pressing their rights to the extent of the law, and ready to brave odium or even personal danger in their behalf". Because of the political vagaries, Key occasionally had cases in which he sought to defend the property rights of slave owners. Key, as many other men of conscience of that era, found himself entrapped in a complicated web of contradictory values and laws that seemed to have no outlet.

In late 1816 Rev. Robert Finley of New Jersey, came to Washington to solicit support for his plans for sending free blacks to resettle in Africa. His philosophy was espoused in a pamphlet entitled *Thoughts on the Colonization of the Free Blacks* which captured the attention of many Americans. The American Colonization Society was founded as a result of Rev. Finley's efforts. The constitution of the Society declared its purpose to be "a plan for colonizing (with their consent) the Free People of Colour residing in our country, in Africa, or such other place as Congress shall deem most expedient." The first presi-



In this romanticized painting, Francis Scott Key observes the Battle of Fort McHenry in 1814. The battle scene inspired Key to write the National Anthem.

dent of the Society was Justice Bushrod Washington, and Henry Clay, Attorney General Richard Rush, and General Andrew Jackson of Tennessee were among its Vice Presidents. Francis S. Key served on the board of managers of the Society.

Key spent considerable time and effort over the next decade promoting the causes of the American Colonization Society, travelling up and down the eastern seaboard to solicit funds and support. Political support ebbed and waned, as did monetary support, and Key and his comrades of the Society were labelled as "men trying to assuage guilty consciences" by many critics. Nevertheless, they pursued their goals and an infant colony was established.

In 1825 Key had occasion to argue a case before the Supreme Court of the United States where he could combine not only his considerable oratorical and legal skills, but also his heartfelt convictions against slavery. The occasion was a case involving a prize ship called the *Antelope*. The ship had been captured off the coast of Florida in 1819, by a United States revenue cutter. It was a Spanish ship engaged in slaving. The ship and its cargo of 280 slaves was claimed by citizens of Spain and Portugal. During the trial, it was learned that a privateer called the *Arraganta* had captured the *Antelope* and several Portuguese ships off the coast of Africa, taking slaves from each of the captured vessels. Both the *Arraganta* and the *Antelope* had then sailed to South America where the *Arraganta* was destroyed. After this catastrophe, the *Antelope* was fortified by crew and armaments from the *Arraganta* and it then sailed to the United States where it was intercepted by the revenue cutter.

The prize ship case was first heard in Savannah in 1820 where the Court dismissed the U.S. government's contention that the slaves should be freed because slave trading was prohibited by U.S. law. The lower Court awarded the American privateers a portion of the slaves, and the balance of the slaves were awarded to the Spanish and Portuguese claimants, on the grounds that slave trading was still legal under the laws of both Spain and Portugal. The case was then appealed to the Supreme Court, where Attorney General Wirt asked Francis Scott Key to help present the government's case.

Oral argument in the Supreme Court did not commence until early March 1825. Key was forty-five years old at that time and was described by a contemporary as "slightly built; his head well formed; his features thin, and very expressive." He had argued before the Supreme Court in a number of cases, against such formidable adversaries as Daniel Webster, and was himself, a considerable orator. He focused his skills and convictions on the issues at hand, hoping to deal slavery a serious blow. The thrust of his argument

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Key (continued from page five)

centered on the premise that the Supreme Court was obligated to carry out the laws of the United States government, and not those of foreign countries such as Portugal and Spain. He claimed that under the provisions of the Slave Trade Acts, all slaves imported into the United States after the passage of the act were entitled to their freedom. Key argued that the Slave Trade Acts:

... gave fair warning to those engaged in the slave trade, that though we did not intend to interfere with them on the high seas, yet if their victims should come within the reach of our laws, we should protect them. These acts constitute a solemn pledge to all nations interested in the suppression of this inhuman traffic, and to Africa herself, that if the objects of it should seek our protection, where they may lawfully receive it, within our territorial jurisdiction. . . they should be entitled to that protection.

Key said the Spanish owners based their claims on the right of previous possession of property. He conceded that "this is true as to goods, because they have universally and necessarily an owner. But these are men, of whom it cannot be affirmed, that they have universally and necessarily an owner." He continued that the contention that these slaves had been taken legally was an unjustified presumption:

... for if there be a permitted slave trade, there is also a prohibited slave trade; and the prohibition is much more extensive than the permission. The claimants must, consequently, show something more than mere possession. They must show a law, making such persons property, and that they acquired them under such law. In order to maintain their title, they show the municipal law of Spain; but the operation of that law can only extend throughout the territory of Spain, and to Spanish vessels on the high seas. These persons are now within the jurisdiction of our conflicting law; and they are brought here without any violation of the sovereign rights of Spain. Our own law, which is in force here, must prevail over the law of Spain, which cannot have an extra-territorial operation.

The Spanish and Portuguese claimants were represented by John Berrien and Charles J. Ingersoll. At the time of the trial, Berrien was a member of the United States Senate, while Mr. Ingersoll was serving as the United States District Attorney for Pennsylvania. The thrust of their argument was that while slaving was prohibited by U.S. law, that it was not prohibited by the "law of Nations" and hence, the slaves must be returned to the claimants whose laws did not preclude the practice.

Henry Stuart Foote, who later served as the Governor of Mississippi, was present for oral argument on this case. He was very impressed with Key's performance and recorded his impressions:

Mr. Key was tall, erect and of admirable physical proportions. . . His voice was capable of being in the highest degree touching and persuasive. His whole gesticulation was natural,

graceful and impressive. . . He had a singularly flowing choice, and pointed phraseology, such as could not fail to be pleasing to persons of taste and discernment. . . . On this occasion he greatly surpassed the expectations of his most admiring friends. The subject was peculiarly suited to his habits of thought, and the generous sensibilities of his soul. It seemed to me that he said all that the case demanded, and yet not more than was needful to be said; and he closed with a thrilling and even an electrifying picture of the horrors connected with the African Slave Trade, which would have done honor either to a Pitt, or a Wilberforce on their palmiest days.

Despite Key's performance, the Court did not find in his favor. John Marshall delivered the opinion of the Court, labelling the case one of "momentous importance." He said that in the case there was a conflict between "the sacred rights of liberty and of property." Marshall continued that despite the moral considerations, "a jurist must search for its legal solution, in those principles of action which are sanctioned by the usages, the national acts, and the general assent, of that portion of the world of which he considers himself as a part, and to whose law the appeal is made. If we resort to this standard as a test of international law, the question, as has already been observed is decided in favour of the legality of the trade."

The Supreme Court upheld most of the lower Court's ruling. The first point it addressed was the claims of the Spanish citizens. It found there was evidence to award the Spanish claimants a portion of the captured slaves. The Spanish had produced several depositions in support of their claims to slaves. One deposition claimed that 150 slaves on board the *Antelope* belonged to the Spanish, while another put the number at 166. The Court ruled that "their proof is not satisfactory beyond ninety-three..." The decree of the court indicates that the ninety-three "shall be according to the ratio which ninety-three (instead of one hundred and sixty-six) bears to the whole number. . . of those which remained alive at the time of pronouncing the said decree. . . ." This wording conjures up a pitiable picture of the slaves who had waited five years in custody to have the American legal system determine their fate. Adding to the pathos of this picture is the fact that the decree instructs, "the individuals who compose this number [those slaves who will be returned to the Spaniards as slaves] must be designated to the satisfaction of the Circuit Court."

Settling the Portuguese claim was more difficult. The original suit had been filed by the Vice-Consul of Portugal, claiming one hundred thirty slaves, or more on behalf of subjects of "His Most Faithful Majesty." The Vice-Consul continued that although "the rightful owners of such slaves be not at this time individually and certainly known to the libellant, he hopes and expects soon to discover them." The problem was that although five years had elapsed, the Portuguese Vice-Consul had never been able to supply the names of the Portuguese subjects for whom he was petitioning. In his opinion, Marshall stated:

This inattention to a subject of so much real interest, this total disregard of a valuable property, is so contrary to the common course of human action, as to justify serious suspicion that the real owner dares not avow himself. . . . This long, and otherwise unaccountable absence, of any Portuguese claim-



One of Key's most famous clients was the legendary Sam Houston who was tried by the House of Representatives for assaulting Representative William Stanbery of Ohio.

ant, furnishes irresistible testimony, that no such claimant exists, and that the real owner belongs to some other nation, and feels the necessity of concealment.

Having reached this conclusion, the Court instructed that:

... all the Africans, now in possession of the Marshal for the District of Georgia, and under the control of the Circuit Court of the United States for that District, which were brought in with the Antelope . . . except those which may be designated as the property of the Spanish claimants, ought to be delivered up to the United States, to be disposed of according to law.

In 1832, Key was called upon to defend folk hero, Samuel Houston against charges of assault and battery by Congressman William Stanbery of Ohio. Stanbery's charge was made in a letter to the Speaker of the House of Representatives, in which he alleged that: "I was waylaid in the street, near to my boarding-house, last night, about eight o'clock, and attacked, knocked down by a bludgeon, and severely bruised and wounded, by Samuel Houston, late of Tennessee. . . ."

Houston had a reputation as a colorful individual. He was large, rugged and exceedingly independent. As a young boy, he disappeared from his home in eastern Tennessee. His brothers found him some time later living with the Cherokee Indians, but he refused to return home saying that he preferred the freedom of Indian life. He lived with the Indians for three years, and at

20 enlisted in the U.S. Army to fight the British. His service career was memorable and included heroic actions in battles against the Creek Indians where he was seriously wounded. He gained the respect and notice of General Jackson for his valor and when he was critically wounded, he was sent home to Tennessee to die. But Houston survived, although he carried some lasting effects of his injuries for the remainder of his life, including a somewhat crippled right arm. He rejoined the regiment where he continued to serve until 1818.

After leaving the Army, he studied law and was later elected to Congress where he served two terms. Houston's political career was assisted by his friendship with Jackson and in 1827, Houston was elected governor of Tennessee. In January of 1829, the Governor married, only to have his wife leave him in April. This blow was difficult and Houston resigned his office as governor and sought to escape the pain and embarrassment by returning to his Cherokee friends. Houston eventually took an Indian wife and never spoke of his problems with his previous wife.

Houston maintained close contact with both his Indian friends and General Jackson and these connections became the subject of allegations of misconduct. During debates on the House floor in March of 1832, William Stanbery of Ohio made a bitter attack against the Jackson administration. Referring to Jackson's recent dismissal of most of the members of his Cabinet, Stanbery asked, "Was the late Secretary of War removed in consequence of his attempt fraudulently to give to Governor Houston the contract for Indian rations?"

The allegation was published in a Washington newspaper two days later and Houston, who was in Washington at the time, was enraged. He sought to contact Stanbery, but Stanbery would not reply. Stanbery knew that Houston would not let the matter rest and the stories of Houston's size and temperament were intimidating. One of the Ohio Senators urged Stanbery to carry pistols and a dirk for self protection. On the evening of April 13, Houston was walking with Congressman Blair of Tennessee and Senator Buckner of Missouri when he encountered Stanbery. After confirming his identity, Houston told Stanbery he was a "damned rascal", and hit him over the head with his walking stick. Houston knocked Stanbery to the ground and continued to rain blows upon him. At one point Stanbery drew a pistol and fired it at Houston, but the charge did not ignite. When Stanbery asked Houston if he was trying to kill him, Houston said he was only punishing him for besmirching his reputation.

The day after the attack, Speaker Stevenson received a letter from Stanbery explaining his absence, and accusing Houston of attacking him "for words spoken in my place in the House of Representatives; by reason of which, I am confined to bed. . . . I communicate this information to you and request that you will lay it before the House." The House passed a motion that Houston be arrested and brought before the bar of the House and on April 16, Houston appeared before the House. He was more than six feet tall, wore a buckskin coat with a fur collar and carried the offending hickory walking stick. Houston was charged and asked if he wished counsel. He responded that he was a member of the Bar and would undertake to defend himself.

Two days later the trial commenced, but Houston had

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Key (continued from page seven)

conferred with Francis Scott Key in the interim, and asked Key to defend him. Despite Key's reputation for diplomacy and delicacy, his opening exchange with the members of the House immediately offended most of them. In his initial statement, he called for a motion that no member of the House who had formed an opinion as to guilt or innocence, be allowed to sit in judgment on the case. The response was immediate and vocal, and Houston and Key were sent out of the chamber while the motion was discussed. Realizing his mistake, Key sent a note in to the Speaker asking that the motion be withdrawn. Permission was granted and the trial continued.

The trial attracted much outside interest and excited much political turmoil. There were strong feelings against the Jackson administration, and Houston was perceived as being a Jackson favorite. Key represented Houston as a disabled war veteran who had sacrificed himself on the field of battle, pointing to his crippled right arm and other physical weaknesses as illustration of his sacrifice. He was quick to point out that Houston had been armed only with a walking stick, while Stanbery had carried, and indeed attempted to use, pistols against Houston.

When Stanbery took the stand, Key was vigorous in his cross-examination and several members of Congress rose to the floor to criticize Key for his tenacity. Stanbery finally admitted that he did think Houston had participated in attempted fraud, and at one point Stanbery referred to Houston as "a man of ruined fortunes and blasted reputation."

In the second week of the trial, Key called Senator Buckner to the stand to testify for Houston. Buckner made somewhat light of the attack, thereby incurring Stanbery's wrath. Incensed, Stanbery rose and decried his testimony as "destitute of truth and infamous."

After two weeks of testimony Key began his defense of Samuel Houston. He tried to make him appear a victim and praised him saying that Houston was proud "as an American citizen, to stand here, representing the great body of people, whose rights he trusts, will be vindicated in his person." Key also apologized for his mistake in asking for the offensive motion at the opening of the trial, pleading with the members of Congress not to hold Key's error against Houston.

The main point of Key's defense was that the House of Representatives did not have the right to try the case and he alleged that "it can never be proper that a party prosecuting offences against itself shall be the judges to try and punish. . . ." Key became quite ill that evening, and the trial was postponed for ten days until he could recover.

When argument recommenced, Key compared the powers of the Supreme Court with those of the House saying of the Court:

public opinion expects (and I trust not vainly) that the men exalted to that high station, when they put on the robes of justice, will lay aside the uniforms of political warfare. To them are committed the scales of justice to be held, with high and steady hand, above the reach of every breath of the storms of party strife. . . . To them is given the sword of justice, to guard the Constitution, the tree of life to the people, from every violation!

He pointed out that the House was intended to be the forum of "conflicting principles and parties", the "arena on which all the popular contests incident to our free institutions are to be fought out." Perhaps injudiciously, he added that "every temptation to the abuse of power that can be imagined will be found here."

In his conclusion, Key asserted that even if the House had the power to try Houston, they should be merciful to this man who had served his country taking "no other spoils than the scars of honest wounds, and the sword which his valor had won." He concluded by begging that Houston's honorable name be cleared as Houston cherished it "as his only earthly treasure."

At the conclusion of Key's defense, Houston addressed the House, after which the House commenced debate over his guilt. After several days of heated debate, the motion to declare Houston guilty of violating the privileges of the House was finally called for. Houston was found guilty by a vote of 106-89. His punishment was to be called before the Speaker of the House to be reprimanded--he was then released from custody.

Key was appointed United States District Attorney for the District of Columbia in January 1833. During his first year of service, Jackson sent him to Alabama to arbitrate a dispute between the Creek Indians and the white settlers. The Creeks had agreed to the terms of the Treaty of Cusseta by which they would cede their traditional lands to the U.S. government in exchange for special reservations west of the Mississippi. According to the provisions of the treaty, no white settlers were to move to their old homelands until the Indians had been comfortably resettled in and approved of their new home.

Unfortunately, the news of the Treaty was made known prematurely and about 25,000 white settlers rushed to the Creek lands to claim stakes. The United States Marshal for the Southern District of Alabama was charged with removing them, but the situation was beyond his control. U.S. Army troops became involved, further complicating and exacerbating the problem. The situation became extremely volatile after a squatter named Hardeman Owens was shot and killed in a confrontation with the Army, and several United States soldiers were indicted for murder.

The military authorities refused to surrender the accused soldiers and the civil authorities demanded that the state militia intervene. The question of state's versus federal rights became critical. Governor Gayle wrote the Secretary of War saying that the federal government had acknowledged Alabama's sovereignty over the territory, and that Alabama intended to exercise that jurisdiction. The Secretary of War, Lewis Cass, wrote the Governor asserting that while the State of Alabama had jurisdiction over the ceded district, the United States government owned the land, and the U.S. Army would remove all intruders from government property, by order of the President. The entire situation was aggravated by political enmity between the Jacksonian Democrats and the Nullifiers, and extreme political pressures were put on the Governor.

The outbreak of further violence seemed eminent, and Jackson and Secretary Cass determined to send Francis Scott Key as a mediator to confer with the state officials and the Army officers. Key arrived in Tuscaloosa and within a week had obtained a promise of cooperation from the Governor of Ala-

Gift Ideas from the Supreme Court Historical Society

Desk Accessories

Desk Folder Cloth-backed vinyl with polished brass-plated corners, this finely constructed business accessory will keep your papers clean and unruffled for important meetings. Inside flap and letter-size ruled pad included. Maroon color, smooth finish with gold stamped picture of the Supreme Court building in the lower right corner. "Supreme Court of the United States" printed in gold beneath the image. \$13.00

Brass Gavel Our brass gavels are perfect for their decorative appeal or actual use. Each piece is turned from solid brass and highly polished and is a little more than one-half scale of the full sized wooden gavels. \$12.00

Walnut Gavel Plaque Our large, impressive plaque measures 9" x 12", is made of rich solid walnut and makes a perfect presentation gift. The plaque is ornamented with the Society's enamel seal, a solid walnut gavel and 2 1/4" x 4 1/2" polished brass plate ready for engraving and gift giving. \$45.00

Ceramic Inkwell These ceramic inkwells are replicas of those used in the Colonial period. They are hand fired in "The Old Dominion" from Virginia clay. Each piece is hand signed and is individually painted with a colorful cobalt blue design. Each inkwell comes with a pair of handcut quill pens. \$11.00 per set.



Pewter Inkwell with Quill Pens Patterned after those made by silversmiths of the Colonial period, this highly polished inkwell has the look and feel of silver and will add a bit of history to any home or office. Each set comes with a pair of handcut goose quill pens and makes a charming gift. \$29.00 per set.

Pewter Plates Richly detailed with no two exactly identical, the plates are crafted in a Queen Ann style. The plates are available in two sizes; diameter of the larger plate measures 10 1/4 inches, while the smaller measures 5 1/2". The plates are hand cast and polished to a burnished sheen. Each plate has the seal of the Supreme Court of the United States centered on it with black edging to highlight the detail of the seal. The larger plate is \$41.00, and the smaller one is \$17.50.

Porcelain Handled Letter Opener This attractive letter opener has a pistol grip handle of black porcelain. The seal of the Supreme Court is embossed on the handle in gold. The blade is Sheffield stainless steel. This attractive and useful accessory is boxed in royal blue for an elegant look. \$8.00

Double Pen Set Solid walnut base with three-inch Supreme Court Historical Society seal in full color enamel. Each set measures 4 1/4" x 10" and comes with matching pens. It is a companion piece to other desk items in our collection. \$28.00

Oblong Laser Etched Box The lid of this box features laser etched pictures of the Supreme Court building and the Supreme Court seal. Lined in velvet, the box measures 4 3/4 x 6 inches and is available with either one or two compartments in your choice of light-blonde maple or dark walnut wood. These attractive boxes are appropriate for use on either a desk or dresser. Please specify wood selection and number of compartments. \$25.00

Round Laser Etched Box Available in natural maple or walnut, each box is four inches in diameter and carved from a solid piece of wood. The boxes are felt lined and have the Supreme Court seal laser etched on the lid with exacting detail. These circular boxes are perfect for holding stamps, paper clips, jewelry or other small items. Appropriate for home or office use. \$9.00

Memo Caddy The memo caddy is crafted from natural walnut and bears the full color enamel seal of the Society. Each tray includes a matching pen and a generous supply of memo sheets which measure 8 1/4" x 4 1/4". Order forms are included for future paper refill needs. \$32.00

Bookends The handsome bookends are decorated with the full color enamel seal of the Supreme Court Historical Society on each piece. The bottom of each piece is covered with cork to prevent damage. \$30.00

Single Pen Set The companion piece to the memo caddy and the bookends, this walnut pen set also features the Society's richly detailed color enamel seal. The bottom is felt covered to prevent damage to fine furniture. The set measures 4 x 5 inches. \$24.00

Hand rubbed Walnut Single Pen Set with two inch gold plated medallion of the seal of the Supreme Court. The set includes a presentation plate to be personalized for the recipient. Felt squares on the base of the pen set prevent damage to furniture. Packaged in gift box. \$45.00

Matching Walnut Pencil Caddy with two inch gold plated medallion of the seal of the Supreme Court. This piece stands five inches high, and is large enough to hold an ample supply of writing instruments. A perfect companion piece to the pen set and is similarly protected by felt pads on the base. \$36.00

Wooden Business Card Holder The newest addition to our collection of desk items is our solid wood business card holder. These items are handcrafted from hardwoods such as walnut, chestnut, or oak, and each comes with the Society's enamled seal recessed into the front of the piece. The holder has a protective felt bottom. Please specify wood type. \$12.00

Paperweights

Our newest desk item is a distinctive 3x3 inch *Solid Black Marble Paperweight*. This impressive black marble has white veining throughout and is embellished with your choice of either a richly detailed casting in bronze of the Supreme Court seal or cast bronze image of the Supreme Court Building. \$14.50

Lead Crystal Paperweight is circular and has a delicately fluted edge. The seal of the Supreme Court is acid-etched in the center of the piece. One of our most popular items, this unusual paperweight measures 3 3/4 inches in diameter. \$5.50

Glass items

Lead Crystal Box measures two and three-quarter inches square and is engraved with the seal of the Supreme Court of the United States on the top panel. Appropriate for keeping small items on a desk, or the two halves can be used as coasters. The boxes are individually gift boxed for convenient gift giving. \$9.00

Smoky, *Beveled-edge Glass Box* with brass trim and hinges. The seal of the Supreme Court is engraved on the lid and is reflected on the mirrored bottom. The box measures 4 x 4 inches and is 2 3/4 inches deep. \$31.50

Glass Set This set of four glasses carry the seal of the Supreme Court of the United States. The seal is acid-etched onto the double-old-fashioned-size glasses. \$13.00

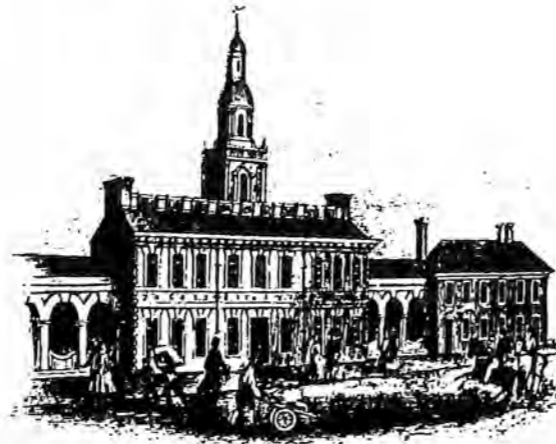
Lead Crystal Glass Set These glasses are made of fine French 24% lead crystal. The seal of the Supreme Court is hand-etched into each glass. The glasses are round, but the lower third is shaped in a columnar form, giving the impression that the glass has a square bottom. These elegant glasses are available in two sizes: double-old-fashioned and highball. Sets of four. \$30.00

Glass Suncatcher The suncatcher is a striking lead crystal diamond-shaped piece that measures 3 x 3 inches and has the seal of the Supreme Court acid-etched in its center. The beveled edge creates dazzling effects when struck by light. This lovely design comes with a ribbon tie so that it may be used as a Christmas ornament, or use the enclosed suction cup to hang in a window and enjoy all year. Individually boxed. \$4.50

Our most popular items

Gavel Pencils This unique pencil has a double-headed eraser which gives it the look of a gavel. The barrel is inscribed with the words "With Liberty and Justice for All", as well as "The Supreme Court of the United States". The pencils are available in cream, metallic silver, and metallic gold colors. \$.65 each or \$6.00 per dozen.

Mugs Crafted of ironstone for durability, the mug is cobalt blue with the Supreme Court building traced in gold. The rim is trimmed in gold for an added touch of class. Individually boxed. \$5.50 each or \$10.50 for two mugs.



Jewelry

Jewelry with the Supreme Court Seal. Die stamped medallions with fine detail, available in gold or silver plate. Tie Bars \$18.00; Tie Tacks \$11.00; Money Clips \$21.00; Cufflinks \$23.00

Elegant *10-K Gold-Filled Jewelry* featuring the seal of the United States Supreme Court. Ladies' Charm \$23.00

Publications

The Documentary History of the Supreme Court of the United States, 1789-1800. This eagerly awaited first volume of the Documentary History Project serves as an introduction to the planned seven-volume history. Volume I, which is in two parts, deals with the structure of the Supreme Court and the official records of its activities from 1789-1800. This volume contains primary source materials including manuscripts, correspondence, private papers, newspaper articles and official records of the period. \$75.00

The Illustrated History of the Supreme Court of the United States by Robert Shnayerson. This beautiful book contains portraits and engravings, hand-colored maps and rare archival items, sketches by Cass Gilbert, the architect of the Supreme Court building, as well as illustrations of the people, places and events associated with the history of the Supreme Court. Its 304 pages contain a bibliography, a chart of justices, and over 370 illustrations, including 86 in full color. **SPECIAL PRICE \$36.00**

The Miracle at Philadelphia: The story of the Constitutional Convention, May to September 1787, by Catherine Drinker Bowen. This volume tells the story of the Federal Convention at Philadelphia in 1787; the stormy, dramatic session that produced the most enduring of political documents--the Constitution of the United States. This classic history recently republished with a foreword by Chief Justice Warren E. Burger, Retired, has been referred to by reviewers as "the most readable of all accounts of the Philadelphia Convention." Well researched and documented, and engagingly written, this book will please both the serious historian and the general reader as well. Paperback edition. \$8.95

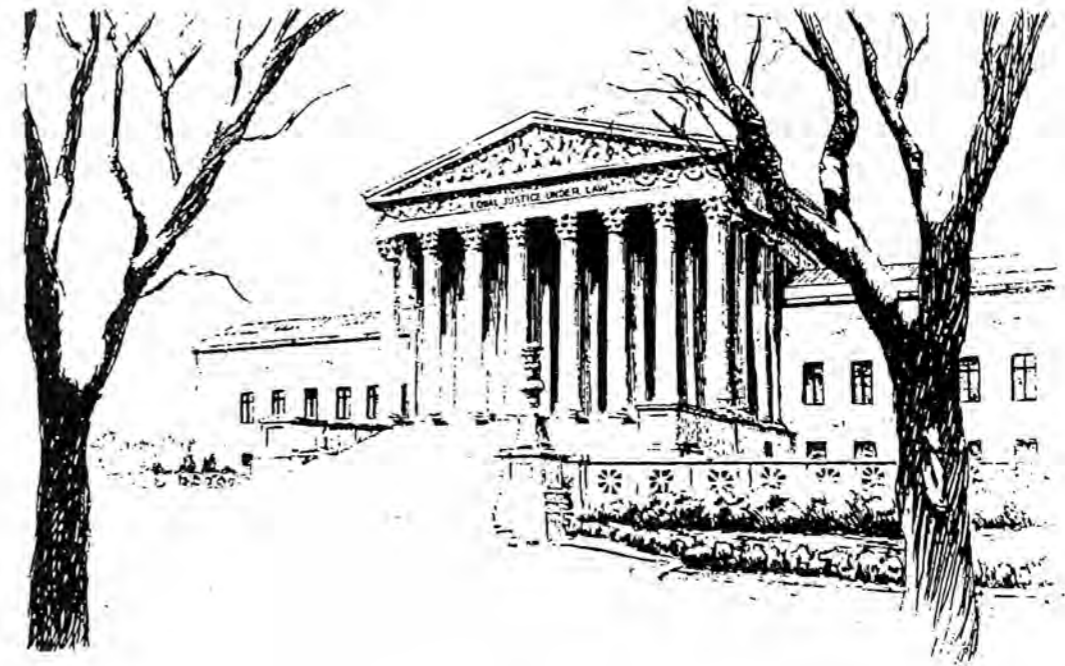
Artwork

Supreme Court Building lithograph This limited edition lithograph by Carolyn Anderson is prepared on museum quality stock, and each print is hand signed by the artist and numbered. The picture is a handsome watercolor rendering of the Supreme Court Building, showing the dome of the original Library of Congress building in the background. The lithograph measures 22 x 28 inches. This attractive piece is appropriate for home or office decor. \$20.00.

Handcolored Watercolor of the Supreme Court building by Andy Dedula. These beautiful paintings are double matted with bevelled edge mats and are ready for framing. The picture is available in two sizes: the small picture is 8 1/2 inches by 7 inches, and the large picture measures 16 inches by 20 inches. Both pictures are excellent values and are priced at \$6.50 and \$11.00 respectively.

Poster of the Supreme Court building by Susan Pear Meisel. This poster was made for the 1980 Washington Art show by noted artist Susan Pear Meisel. The poster is done in the bright, vibrant tones characteristic of Ms. Meisel's style and has a very contemporary feeling. \$10.00.

Doors of Washington poster. This poster is one of a series featuring interesting and unique doors. The poster features the bronze doors of the Supreme Court building, as well as those of many private residences and buildings throughout the District of Columbia, and presents a unique view of Washington. \$8.50.



Greeting Cards

Christmas Cards Two new cards for holiday remembrances. The cards are beautiful full-color photographic images of the "Capitol in the Snow" and the "Supreme Court in the Snow". The pictures and greetings are non-religious and the message is the holiday season as portrayed by two of the most important buildings in the Nation's capitol. The cards measure 5 x 7 inches. The rich colors in the photographs are enhanced by the accompanying blue envelopes. Individual cards \$.50 each; 100 or more \$.39 each

Embossed Note Card This white on white notecard features a blind embossing of the Supreme Court building for an understated, elegant look. The card is blank and can be used as a card or notecard. The card measures 4 1/2 x 6 inches and is accompanied by a white envelope. \$.90 each

Engraved Card Pictured above, our newest card is a rich, creamy card engraved in dark brown. The rendering of the Supreme Court building is framed in the foreground by trees and catches the front pediment with its legend "Equal Justice Under Law". Both the card and the matching creamy envelope have a deckled edge. \$1.00 each or 10 cards for \$8.50

Ordering Information

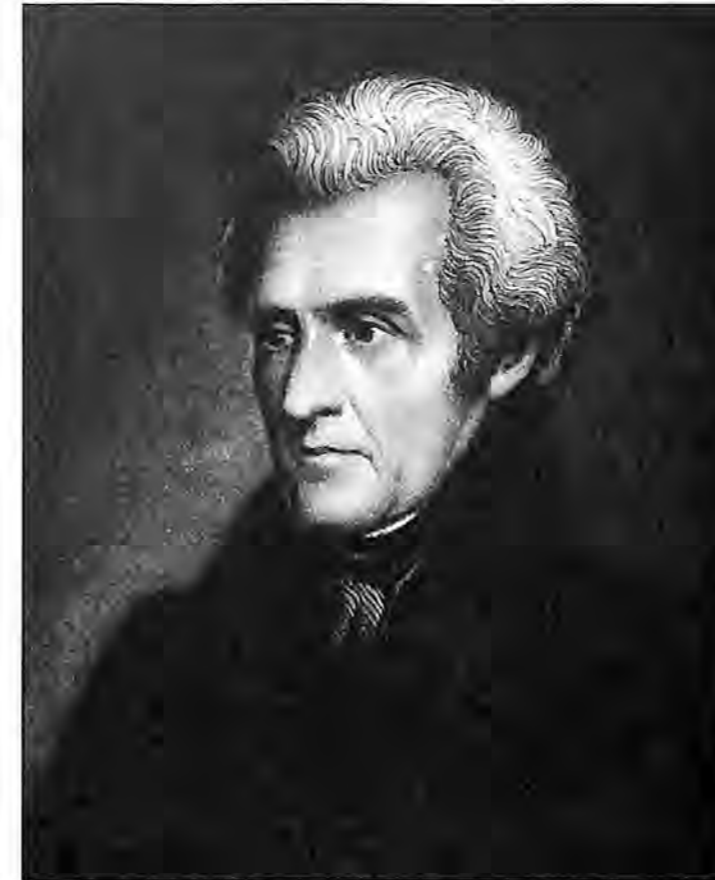
The prices quoted in this gift list include the Society member's discounts. For your convenience, we have calculated shipping charges and the discount together so that you need not worry about additional shipping and handling charges.

To order, please send this form along with your check, money order or credit card name, number and expiration date to: The Supreme Court Historical Society 111 Second Street, N.E. Washington, D.C. 20002. MASTERCARD or VISA users may also order by telephone by calling (202) 543-0400, between 10:00 AM and 4:00 PM (EST), weekdays. Please allow three to four weeks for standard delivery. Special rush orders may be possible. Please telephone for information and availability.

Name _____ Tel. _____
 Address _____
 City _____ State _____ Zip _____
 Credit Card No. _____ Exp. Date _____
 (If applicable, Mastercard/VISA only)

Quantity	Item	Price	Total
_____	Desk Folder	\$13.00	_____
_____	Brass Gavel	\$12.00	_____
_____	Walnut Gavel Plaque	\$45.00	_____
_____	Ceramic Inkwell	\$11.00	_____
_____	Pewter Inkwell with Quill Pens	\$29.00	_____
_____	Pewter Plates (large / small)	\$41.00 / \$17.50	_____
_____	Porcelain Handled Letter Opener	\$8.00	_____
_____	Double Pen Set	\$28.00	_____
_____	Oblong Laser Etched Box (one compartment / two)	\$25.00	_____
_____	Round Laser Etched Box	\$9.00	_____
_____	Memo Caddy	\$32.00	_____
_____	Bookends	\$30.00	_____
_____	Single Pen Set	\$24.00	_____
_____	Walnut Single Pen Set	\$45.00	_____
_____	Walnut Pencil Caddy	\$36.00	_____
_____	Wooden Business Card Holder	\$12.00	_____
_____	Black Marble Paperweight	\$14.50	_____
_____	Lead Crystal Paperweight	\$5.50	_____
_____	Lead Crystal Box	\$9.00	_____
_____	Beveled-Edge Glass Box	\$31.50	_____
_____	Glass Set	\$13.00	_____
_____	Lead Crystal Glass Set (double old-fash. / highball)	\$30.00	_____
_____	Glass Suncatcher	\$4.50	_____
_____	Gavel Pencils	\$.65 each, \$6.00 doz.	_____
_____	Mugs	\$5.50, two for \$10.50	_____
_____	Tie Tacks (specify gold or silver plate)	\$11.00	_____
_____	Tie Bar (gold / silver)	\$18.00	_____
_____	Money Clip (gold / silver)	\$21.00	_____
_____	Cufflinks (gold / silver)	\$23.00	_____
_____	10-K Ladies' Charm	\$23.00	_____
_____	Documentary History	\$75.00	_____
_____	Illustrated History	\$36.00	_____
_____	Miracle at Philadelphia	\$8.95	_____
_____	Anderson Lithograph	\$20.00	_____
_____	Dedula Watercolor (small / large)	\$6.50 / \$11.00	_____
_____	Supreme Court Poster	\$10.00	_____
_____	Doors of Washington Poster	\$8.50	_____
_____	Christmas Cards (Capitol / Supreme Court)	\$.50	_____
_____	Embossed Note Card	\$.90 each	_____
_____	Engraved Card	\$1.00, 10 for \$8.50	_____
_____	Total		_____

Note: Prices on this list include postage and member discounts. Non-members must add twenty percent to the prices listed.



President Andrew Jackson (above) dispatched Key to Alabama to mediate between the U.S. Army and state officials.

bama. He also conferred with leading members of the legislature trying to obtain their support. He then travelled to Fort Mitchell to speak with Major McIntosh, the commanding officer. The Major was angry that his soldiers had been indicted for murder while performing their duties. Key sought to argue constitutional principles with the Major, adding that his actions would set a precedent for posterity. McIntosh finally acceded to his pleas and consented to allow the civil authorities to arrest the indicted men.

Key offered a settlement agreement on behalf of President Jackson which allowed the settlers to remain on the land outside the Indian reservations; it promised surveys of the reservations would be completed within a month, opening the way for resettlement by the squatters; and provided that squatters currently on Indian lands would be allowed to stay if they compensated the Indians directly for the land. The Governor was satisfied with the terms, and although the extremists in the legislature initially complained of "usurpation of power," the general populace was very pleased and the legislature was forced to ratify the agreement.

Major McIntosh's soldiers were indicted, but they were allowed to post bail. The soldier who was accused of shooting Owens deserted the army and was never apprehended. It became clear that the trial would never be held, and Key wrote Governor Gayle: "As the officers and soldiers will not be forthcoming to take their trial, I shall not have the pleasure of defending them, and you will have to forfeit their bond." No one seemed displeased with this outcome, and the situation in Alabama was resolved.

As U.S. District Attorney for the District of Columbia, Key had occasion to argue many cases before the Supreme Court of the United States, and the U.S. District Court. One of the most unusual involved an assassination attempt on President Andrew Jackson. After attending the funeral service of Congressman Davis of South Carolina, Jackson was attacked in the Capitol building by a man armed with two pistols. The attacker fired the first pistol when he was within six or eight feet, but the powder did not ignite. The man then pulled out a second pistol and fired at point blank range, but the percussion cap failed to ignite the charge. The would-be assassin was then apprehended.

As District Attorney, Key was responsible for prosecuting the government's case. After investigation, it was learned that the accused, Richard Lawrence, although seemingly rational, had a history of mental illness. He had delusions that he was the rightful heir to the British throne and that if he could eliminate President Jackson he would be better able to assert his claims. He also made claims that the Bank of the United States owed him money, and that Jackson had personally refused to pay him.

The trial contained testimony by medical authorities, U.S. Senators and Congressmen who had been present at the assassination attempt and perhaps most unusual, given the circumstances, testimony as a witness to the attack was given by Judge Cranch, the presiding judge at the trial. Despite Key's efforts, the verdict was reached within minutes--not guilty by reason of insanity. The pathetic Lawrence was remanded to an insane asylum in Washington where he lived for forty years.

Key continued to argue frequently before the Supreme Court. In 1834 he argued a case with Daniel Webster and Walter Jones concerning the Chesapeake and Ohio Canal Company. That same year, Key also argued before the Court concerning the disputed estate of Thaddeus Kosciusko, the Polish patriot. Kosciusko had executed two wills, the last being signed in Paris in 1806. Key contended that the will of 1806 superseded the previous will. The case was very complicated as it concerned foreign law as well as United States law, and the Court declined to decide the case saying that it did not have sufficient information to make a ruling.

During the 1835 term of the Court, Key appeared as counsel in twelve appeals, including a case for the Bank of Georgia which involved \$30,000, and a case involving the contractors who had constructed eight locks on the Chesapeake and Ohio Canal. In the C & O Canal case, Key again worked with Daniel Webster.

Throughout all of his adult life, Key's life was closely entwined with that of his brother-in-law, Roger Taney. Key frequently served as a messenger between President Jackson and Taney, relaying messages and offers of cabinet appointments through Key. Taney first entered Jackson's cabinet as Attorney General in 1831. In September of 1833, Jackson appointed Taney as Secretary of the Treasury. This move was prompted by Jackson's desire to remove federal funds from the Bank of the United States to hinder its attempts to be rechartered. Taney served as Secretary of the Treasury on an interim appointment until the summer of 1834, when Jackson finally submitted his name to the Senate for approval. Clay and Calhoun led the attack, and the nomination of Taney was rejected. This gave Taney the dubious distinction of being the first person nominated to a cabinet post to be rejected by the

--continued on page ten

Key (continued from page nine)

Senate. Taney resigned and bided his time until the political climate would change.

In 1835 a vacancy on the Supreme Court Bench was created by the death of Gabriel Duvall. Jackson presented Taney's name as his candidate for Associate Justice, but the Senate rejected the nomination. Neither Jackson nor Taney was daunted by this setback, and when Marshall died in the summer of 1835, Jackson nominated Taney as Chief Justice. The political situation had changed sufficiently and on March 16, 1836, Taney was confirmed as Chief Justice of the United States. And thus, for the last few years of his career before the Supreme Court bar, Key argued before his brother-in-law as Chief Justice.

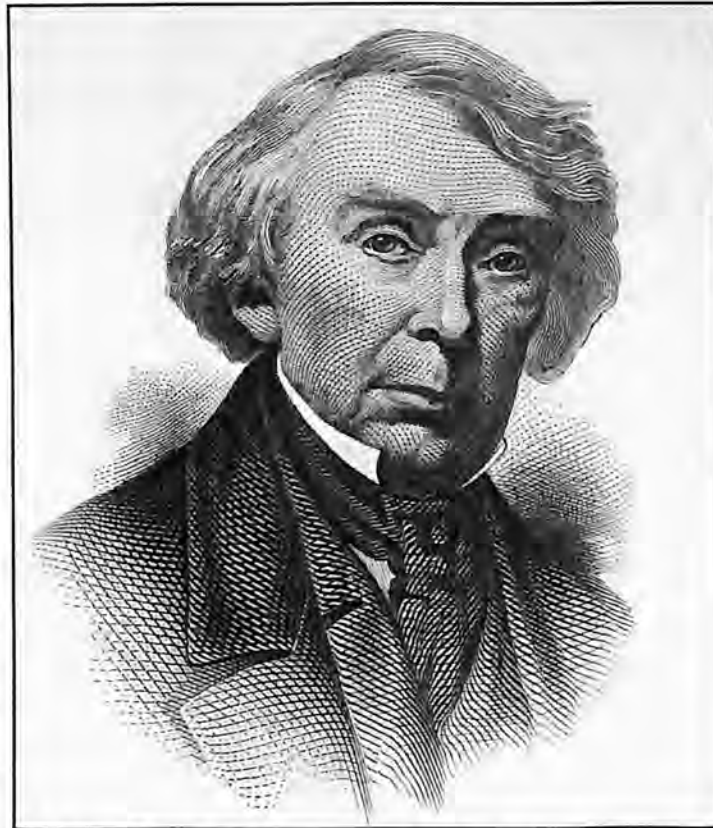
Probably the most noteworthy case Key ever argued was in 1837, with Taney serving as Chief Justice. The case, *Kendall v. United States*, concerned the power Congress could exert over a Cabinet officer. Kendall was serving as Postmaster General. When a dispute arose over settlement claimed by individuals who had contracted with the previous Postmaster to deliver mails, Kendall settled the claims at \$122,000. The contractors then appealed to Congress saying that they had been treated unfairly. Congress passed legislation authorizing the Solicitor of the Treasury to make an adjustment to the payment. The Solicitor found that the contractors were entitled to \$162,000, and instructed Kendall to pay the difference. Kendall refused on the grounds that the Solicitor had overstepped his authority, and misconstrued the terms of the act.

The claimants appealed to Congress again who said no further legislation was necessary. The contractors then petitioned the Circuit Court of the District of Columbia to order Kendall to settle the claims. The Circuit Court issued a mandamus ordering Kendall to make the settlement.

Attorney General Butler and District Attorney Key, represented Kendall, and brought a writ of error to the Supreme Court. Key argued that the mandamus was an attempt by the judiciary to exercise unwarranted powers, and was an invasion of the prerogatives of the Executive Branch. Key further argued that the President was ultimately responsible for the actions of Cabinet members, as their functions were clearly executive, and hence the mandamus encroached upon his province.

Justice Smith Thompson wrote the majority opinion in which he held that the Court could order Kendall to fulfill "a mere ministerial act, which neither he nor the President had any authority to deny or control." Thompson distinguished between duties of an executive character, and duties of a more routine nature. He further held that a Cabinet officer could not be construed as being under the direction solely of the President. Smith said that concept "if carried out in its results to call cases falling within it would [result in] . . . clothing the President with a power entirely to control legislation of Congress, and paralyze the administration of justice." Chief Justice Taney and Associate Justices Barbour and Catron dissented, and Taney was attacked in the Whig newspapers for showing partisan prejudice.

In the closing decade of his life, Key moved his family from Georgetown into Washington proper. He and Polly were the parents of 11 children. By 1836, one son had drowned in the Potomac, five of the children had married and left home, while another had left home to serve as an officer in the Navy. Of the



Chief Justice Roger Brooke Taney was one of three Justices who dissented in the Court's ruling in *Kendall v. United States*. The majority opinion favored the position taken by then District Attorney Key.

ten surviving children, two died suddenly. Daniel was killed in 1836 in a duel with a fellow naval officer, while Key's older son John died after a brief but painful illness.

Key lived only seven years after Taney became Chief Justice, and for all of those years he served as U.S. District Attorney, having been nominated by Jackson as one of the final acts of his administration. His second nomination was confirmed in 1837. Key's third appointment as U.S. District Attorney came from President Martin Van Buren, and took effect in January of 1841. During this period Key participated in a case in the Circuit Court in which he defended Robert White, Collector of Customs for Georgetown. Political enemies were trying to remove White from his office and after he had been ejected from office, he sued on charges of slander. The evidence on which the case turned was a letter sent to President Tyler. The Circuit Court ruled that it was inadmissible as it was a privileged communication, and White lost the suit. Unfortunately, Key did not live long enough to see this judgment overturned by the Supreme Court.

On the evening of January 11, 1843, Key passed away after a brief illness. The following day, the Supreme Court adjourned in respect for his memory. Officials offered the family the use of the battle flag which had inspired "The Star Spangled Banner" for the funeral services. Key was buried in St. Paul's cemetery, but in 1866, his body was removed to Mt. Olivet Cemetery in Frederick. Key's fame as a patriot and a poet grew over the years, but his reputation as an outstanding jurist did not keep pace. It seems unfortunate that this able advocate, associate and perhaps equal of Daniel Webster and William Wirt, is only remembered for one poem.

The American Solution: Court Hosts Exhibit on the Constitution

The United States Constitution is one of the most famous political documents in the world. The system of government it describes has often been represented as the best that has come from the mind of man. But the authors of the Constitution were not so sanguine about their work. Three of the principal contributors to the Constitution, Elbridge Gerry, George Mason, and Edmund Randolph, refused to put their signatures on the finished document. In reality, the framers of the Constitution were asking the nation to participate in a noble experiment. It succeeded, partly because the Constitution is open-ended in that it allows for amendments, partly because of the reasonableness of the American people. With one exception, Americans have demonstrated a willingness to compromise on potentially explosive issues, placing national unity ahead of regional and ideological differences.

A selection of manuscripts, prints, maps and documents that display the process of development of the United States Constitution is currently on exhibit in the Supreme Court of the United States. The exhibition, entitled "The American Solution," attempts to show the spirit of compromise that enabled the Constitution to be written and ratified during the difficult early years of the United States.

The early national government of the United States was constituted under the Articles of Confederation and Perpetual Union. To form the government, the Articles specified a plan for the Confederation Congress, a one-house legislature composed of appointed officials. It was empowered to declare and conduct war, coin and borrow money, maintain a national treasury, enter into treaties and alliances, appoint courts for the trial of pirates, and provide limited domestic services. It also served as a final court of appeals in boundary disputes between the states. However, the Confederation Congress could not act on most matters without the express approval of two-thirds of the states. With

each state casting one vote, regardless of size or population, this meant that any five states acting together on an issue could prevent the national government from functioning. The national government was, in reality, little more than a league of friendship for the states. Because Congress did not have the power to enforce its will upon individual states, many states ignored Congressional resolutions with impunity.

With the government in such condition, it was inevitable that the national treasury would suffer. The system of voluntary state contributions to the national government failed. John Nourse, who served as registrar of the United States Treasury during this time, published a "Schedule of Requisitions on the several States, June 30, 1786." The schedule, appearing in the exhibit, was published partly to embarrass the state legislatures, hoping that this would force them to meet the financial demands of Congress. The picture Nourse presented, showing money paid out and owed by the states throughout the Confederation, oversimplified the problem of post-war finance in that states had accumulated enormous debts of their own supporting the war effort. When the cost of the war was distributed, it was found that the Congress actually owed money to several states. It is a complex issue, but it is obvious from Nourse's records that after 1784, state contributions to the national treasury dwindled to a trickle, and without an independent source of income, the central government could not continue to exist.

Without a source of funds, war debts could not be paid, and the nation could not borrow money. Schedules for the repayment of foreign loans are included in the display which show "the Periods of Redemption, with the Annual Interest payable thereon until their final Extinction, for which Provision is yet to be made." Despite the ambitious schedules, indebtedness abroad increased under the Confederation, and nations grew less willing

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There was some doubt initially whether George Washington, seated at the elevated table at center, would even attend the Constitutional Convention. Once there, he was selected to preside over the Convention and proved instrumental in effecting many of the compromises ultimately included in the Constitution.

Constitution Exhibit (continued from page eleven)

to lend money.

Monetary problems were exacerbated by the economic depression that followed the revolutionary war. American ships had been prevented by Great Britain from trading in the West Indies, and Britain had forbidden the purchase of American goods by her citizens. American states tried to retaliate with specific duties on British exports, but there is little doubt as to which economy suffered more. American exports dropped dramatically in the postwar era. The shipbuilding industry was especially hurt, which affected sailmakers, ropemakers, riggers, blacksmiths, carpenters, and other associated trades. Farm wages fell twenty percent below the wartime level. By late 1785, the nation was in the middle of a severe economic depression with no end in sight.

States adopted divisive measures to ensure their own financial stability. New York placed a tax on all goods entering and leaving its borders, including its busy harbor. This placed a heavy burden upon Connecticut and New Jersey, and New Jersey retaliated by assigning an astronomical tax to a plot of land that was rented to New York for a lighthouse.

Other states sought relief by advocating the use of paper money. The issuance of paper money, as specie was in short supply, was seen by some as a practical response to local demands for credit. Paper money advocates won the majority of seats in the Rhode Island General Assembly in the spring of 1786 and immediately passed a law authorizing the issuance of one hundred thousand pounds in paper money. "An Act to stimulate and give Efficacy to the Paper Bills" was the first of the force acts passed by that General Assembly to protect the value of the bills. It required all merchants, traders, and public officers to take an oath affirming that they would accept paper money on par with specie. This act, and later force acts, failed to prevent paper money from being a highly inflationary form of currency.

Congress had been permitting states to pay a portion of their taxes in paper money, but in 1786 declined to increase the allowed portion for Rhode Island, as the value of that state's paper money was significantly inflated. The Congress might just as well have acceded to the requests, because Rhode Island refused to pay anything to the government that year. Fiscal crises contributed to a burgeoning imbroglio that led those in Rhode Island to refuse participation in other Confederation attempts to secure financial stability.

Congress had asked the states to ratify an amendment to the Articles of Confederation granting it power to levy a five percent tax on all imported goods. To make the proposal more attractive, Congress stipulated that all moneys raised would be applied solely to war debts. But as James Madison lamented in a letter to Edmund Randolph, the state of Rhode Island refused to cooperate. His letter, partially written in cipher, reads "The obstinacy of Rhode Island in rejecting the imports is a subject of general and pointed criticism not only among the noble few and their friends who deem it equivalent to a denial of justice, but among the most enlightened patrons of the national interest."

Rhode Island obstructed the Confederation proposal in order to pursue its own interests, as many other states had done and continued to do. Public appeals were made to the states in an attempt to end self-serving behavior. Two appeals



James Madison arrived at the Constitutional Convention convinced of the need for a stronger central government.

to the states are displayed, one from John Adams, then serving as the Secretary of the United States for the Department of Foreign Affairs, and one directly from the Congress. The petitions call on the states to adhere to the financial obligations of the Treaty of Paris, as some states had stopped paying compensation to loyalists and were not honoring war debts. These documents show the frustration in the central government over its relations with the individual states.

In a letter to Thomas Jefferson, James Madison wrote that "Congress has kept the vessel from sinking, but it has been by constantly standing at the pump, not by stopping the leaks which have endangered her. All their [the delegates] efforts have been frustrated by the selfishness of their constituencies."

The plight of the Confederation Congress intensified when it became apparent that Americans would no longer honor the compensation claims of loyalists. In retribution, Great Britain refused to recall her soldiers from forts located around the Great Lakes, straining an already tense relationship between the Confederation government and Indians in the northwest region. An Indian federation threatened to take up arms in order to prevent further encroachment on their territory. The constant

agitation with Indians in the region impeded western movement, subsequently reducing revenues from land sales in the western frontier.

An underlying cause of frontier unrest may be seen in a 1786 Resolution of Congress that is on exhibit. The resolution is a Report of the Committee of the War Office that evinces the determination of Congress to survey and sell the remaining fertile lands east of the Mississippi River. Congress had little interest in the inalienable rights of Indians and even less interest in protecting their territories. In this act, "the Committee deems it highly necessary that troops in the service of the United States be immediately augmented, not only for the protection and support of the frontiers of the states bordering on the Western territory and the valuable settlements on and near the Mississippi, but to establish the possession and facilitate the surveying and selling of those intermediate lands, which have been so much relied on for the reduction of debts of the United States."

Further compounding the Indian problem was the fact that under the Articles of Confederation the states were allowed to enter into separate treaties with the Indian tribes within their boundaries. Such action rendered Federal power on Indian affairs, such as that expressed in the above resolution, a "mere nullity."

Clearly, the Confederation Congress lacked the ability to defuse the increasing complexities of the region. New Spanish claims for the entire area west of the Appalachian mountains and south of the Ohio River created a diplomatic crisis. Spanish agents under the direction of Alexander McGillivray, a Creek chieftain, conspired to consolidate the Southern Indian tribes and drive frontiersmen from Georgia and the Carolinas back across the Appalachians. The Spanish action to close the Mississippi River to foreign navigation in 1784, done in part to retain lucrative trade with the Indians, hastened emerging East vs. West feelings.

Rising sectional controversies are evident in letters included in the exhibit. In the first, James Madison demonstrates the strength of support that Virginians felt for their "brethren," the people living in the western regions that were now cut off from their only reliable access to the outside world. The gravity that Madison afforded the issue is apparent, as key words in the letter are encoded. The interlinear work to decode the document was done by its recipient, James Monroe.

Monroe, in an August 12, 1786 letter to Patrick Henry, writes of his observations of sectional strife. He believed that the people of New York and Massachusetts were far more concerned about the settlement of their own vacant lands than they were about the opening of the West. It was feared that western development would only continue to diminish the limited supply of laborers, and might eventually take away the seat of government. Sectional differences based on sovereign states working to advance only their own interests joined with the western uncertainties to further erode the national government.

A map reflecting the sovereignty of the individual states and the uncertainty of the nation's western boundary is part of the exhibit. Produced by British publishers after the cessation of hostilities in the War of Independence, John Wallis's map shows the names and boundaries of the new republic. Georgia, for example, extending all the way to the Mississippi River, incorporates territory claimed by Spain. The open-ended frontiers of

North Carolina, Virginia, and Pennsylvania suggest the conflicting aspirations of many Americans toward the region west of the Appalachian Mountains. Some considered the area to be ungovernable and a potential liability, while others viewed its eventual occupation as the Nation's manifest destiny.

Conflicting public opinions and continuing controversies took effect. Popular support for the government waned as more people became aware of the growing political impotency. Virginia delegate John Mercer wrote to his new Governor, Benjamin Harrison, that "The American Government has sustained a rapid deterioration of character since the Peace, both at home and abroad." Public servants and others lost interest in the central government. Delegates found election to Congress onerous and refused to attend. Attendance in Congress declined, and quorums were difficult to obtain; without the legal authority to conduct business, government sometimes stopped. By the time of the Philadelphia Convention, there had been only two days out of the entire Congressional year that delegates from all thirteen states had attended a session. The utility of maintaining the Union was being questioned.

Talk of a possible convention began to circulate in Congress. A letter displayed from Connecticut soldier-statesman David Humphreys to his friend George Washington relays his opinions on the matter:

I am induced to expect that the only good it [a convention] can do, will be to demonstrate to the People that a number of those in whom they possess Confidence believe seriously we cannot remain as a Nation much longer, in the present manner of administering our actual Government. The evil appears to me to consist more in the untowardly dispositions of the States (who make no hesitation in palpably violating the Confederacy whenever it suits their interests) rather than in the form of our rational Compact as it exists on paper. What is to be done to cure these dispositions? We may have what forms we please, but without coercion, they are as idle as the wind.

A solution to the problem proved elusive because it originated with the document upon which the government was based--the Articles of Confederation.

The early disillusionment with the system of government under the Articles of Confederation by one of the Nation's foremost political thinkers, Alexander Hamilton, is shown in an unsubmitted resolution dated June 30, 1783. Hamilton's document, which is included in the exhibit, is especially notable because it demonstrates his ability to accurately identify the problem areas of the government. The two page draft lists twelve weaknesses of the Confederation government. Hamilton's first point is that the power of the Federal government is confined too narrowly, "withholding [sic] from it that efficacious authority and influence in all matters of general concern which are indefensible to the Harmony and welfare of the whole." He describes difficulties created by the "want of a Federal Judiciary having cognizance in all matters of general concern." In larger writing and in much darker script, Hamilton makes the point that the government must "vest Congress with the power of general taxation," which he underlines for further emphasis.

--continued on next page

Constitution Exhibit (continued from page thirteen)

This resolution was prepared for the Princeton meeting in 1783 but was never submitted. Congress was in no position to consider such a radical position at that time, as the delegates had just been forced from their normal meeting place in Philadelphia by mutinous soldiers from the American Army. The delegates hastily assembled in nearby Princeton, New Jersey, but were without a quorum and were absorbed in suppressing the rebellion and reestablishing authority in Pennsylvania.

By December of 1785, there was talk in Virginia of a "meeting of Political-Commercial Commissioners from all the states for the purpose of digesting and reporting the requisite augmentation of the power of Congress over trade." Virginia was ready to bypass Congress for Constitutional reform. On January 21, 1786, in the Virginia House of Delegates, James Madison introduced a resolution to appoint Commissioners from the sister states "to consider how far an uniform system in their Commercial Regulations may be necessary to their common Interest and their permanent Harmony." A draft of this speech written in Madison's hand is displayed with other correspondence presaging the Annapolis Convention.

A letter by James Madison addressed to Thomas Jefferson while the latter was serving in Paris establishes Madison's expectations for the meeting. He did not think that Maryland would attend, but expected most others would, especially those states most affected by the proposed regulation of commerce. Madison includes a long postscript, in which he recounts efforts to gather "peccan [sic] nuts and the seed of the sugar tree," and inquires if "there are no other things here which would be acceptable" to send to Jefferson. Madison writes that "I lately had on hand a female opossum with seven young ones which I intended to have raised for the purpose of partly experimentation for myself and partly of being able to forward some of them to you. Unfortunately, they have all died." Madison, like his friend Jefferson, tried to maintain his gentleman farmer lifestyle and diverse interests while attempting to organize the Annapolis Convention.

The Annapolis Convention has been considered to be the brainchild of James Madison, however, recent studies show that at this stage of his career, Madison was distrustful of the convention approach for solving national problems. Rather, he preferred to press for change within the established political system from his seat in the Confederation Congress. Regardless of his true position, the Annapolis Convention was not successful in solving national problems, as not enough of the States sent delegates for effective representation.

The one positive result of the Convention was a Resolution to Congress, a draft of which is included in the exhibit. The Resolution recommended to legislators that they endeavor "to procure the concurrence of the other States, in the appointment of Commissioners, to meet in Philadelphia on the Second of May next, to take into consideration the situation of the United States, to devise such further provisions as shall appear to them necessary to render the Constitution of the Federal Government adequate to the exigencies of the Union."

In a letter to then Congressman James Monroe, St. George Tucker of Virginia includes a candid confession that the Annapolis delegates knew both that they had failed, perhaps ir-

reparably, in their extra-legal attempt to strengthen the central government and that they had exceeded their authority in the substance of their address to the Confederation Congress. Dated September 10, 1786, the letter reads:

"You have by this time, I conclude, seen the address to the States, as a copy was in the first instance transmitted to Congress. We have certainly exceeded our person, in this address- but under such a concurrence of circumstances with unfavorable aspects, it was judged expedient, if profitable, to prevent our enemies from receiving the same impressions of the disjointed Councils of the States, as we ourselves felt. If you view this matter in the same light that I do, you will concur with the Commissioners in opinion, that finding they had not power to do that which was entrusted to them, it was better to do something extraneous, than to let it be discovered that the plan of the Convention had altogether miscarried. Perhaps the veil under which this Concealment is made is too thin to beguile even a common observer: it may be so: yet I can assure you not a little pains were taken to make it even of that consistency which it now appears to possess."

Delegates of the Confederation Congress meeting in New York City received the resolution from the Annapolis Convention on September 20, 1786, but did not act upon it for five months. Events finally forced delegates to move "that a Convention of Representatives from said states be held...for purpose of revising the Articles of Confederation and Perpetual Union." The Congress accepted a resolution stipulating that a Convention be held for the "sole and express purpose" of revising the original articles.

The Resolution of Congress for February 21, 1787, endorsing a Constitutional Convention, was sent to each of the thirteen State Legislatures. The Resolution, which is on display, makes specific mention of New York State, which had, as late as February 17, managed to block such action by Congress. "Whereas there is provision in the Articles of Confederation and Perpetual Union for making alterations therein by the assent of a Congress of the United States and of the Legislatures of the several States; and whereas experience has evinced that there are defects in the present Confederation, as a mean to remedy which several of the States, and particularly the State of New York by express instructions to their delegates in Congress have suggested a Convention for the purpose expressed in the resolution, and such Convention appearing to be the most probable means of establishing in these states a firm national Government," we are resolved to call for a Convention to be held in Philadelphia in May next.

To prepare for the Philadelphia Convention meant fighting for its endorsement, communicating with influential people in the nation to encourage their participation and support, staying abreast of the progress of states in the appointment of delegates, and laying the ground work for a plan of action once the Convention had begun. James Madison performed all these duties and more. He undertook a study of ancient and modern confederacies to determine their weaknesses and strengths, why they succeeded or failed, and how to best guarantee the permanence of the new government he hoped would emerge.

A selection of Madison's notes on display show the focus of his study on confederacies to center on the ability of central governments to collect requisitions from the states or control



Alexander Hamilton (above) considered Congressional service as a "short apprenticeship" before opening a law practice in New York City.

domestic and international commerce. He also noted the capricious behavior of state governments, which violated not only the rights of other states, but also the rights of their own citizens. Madison outlined his proposal, which became known as the Virginia Plan, in letters that he wrote to key delegates.

Madison attempted to assess opinions and steer thinking of fellow delegates in the direction he planned to lead the entire convocation. In one letter written in April 1787, Madison expresses bitterness over Rhode Island's refusal to participate. In his words, Rhode Island "has refused to follow the general example. Being conscious of the wickedness of the measures they are pursuing, they are afraid of everything that may become a constraint upon them. The probable diversity of opinions and prejudices, and of support or real interest among the states renders the issue [the approaching Convention] totally uncertain. The existing embarrassments of the Confederacy found the only ground of hope that a Spirit of concession on all ideas may be produced by the convention."

Madison was not the only delegate to assess the prospects of the Convention uncertainly. Patrick Henry, among others, refused to serve. It was feared that George Washington, the head of the Virginia delegation, might not attend the Convention. In an exhibited letter written to Washington, Edmund Randolph, the newly elected governor of Virginia, pleaded for his support. Wrote Randolph, "to you I need not press our present dangers. The inefficiency of Congress you have often felt in your Official Character: the increasing languor of our associated republics you hourly see: and a dissolution would be I know to you a source of deepest mortification. I freely then entreat you to accept the unanimous appointment of the General Assembly, to the Con-



John Jay, the future Chief Justice, was instructed by Congress to enter into discussions to reopen the Mississippi River with Don Diego de Gardoqui, the Spanish Minister. Jay was suspected of having succumbed to Spanish influence, as de Gardoqui was his frequent visitor in New York City. When Jay finally submitted his treaty to Congress, the delegates discovered that he had agreed to a lengthy moratorium on American navigation of the Mississippi, and tempers flared on all sides. Jay's political career survived the ordeal, but at the time he was pilloried in the Eastern press and burned in effigy in the West.

vention at Philadelphia. For the gloomy prospect still admits one ray of hope, that those who began, carried on and consummated the revolution, can yet rescue America from the impending ruin."

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

Call for Papers

Research in Social Policy: Critical, Historical and Contemporary Perspectives: The General Editor of this JAI Press Annual Series is soliciting papers and detailed paper abstracts for Volumes III (1990) and IV (1991).

This peer-reviewed annual which focuses more on theoretical than practical analyses, attempts to fill the gap in the social policy journal field by: (a) encouraging historical as well as contemporary cases of social policy developments and implementation and (b) stressing unconventional interpretations of social policies (e.g., Marxism, phenomenology, psychohistory, critical theory, politics of underdevelopment, and internal colonialism). It publishes papers on social policies as developed by elite decision-makers in States, missions, foundations, communities, international political bodies as well as those which explore the response of subjects of such policy-making. Examples: federal civil rights policy-makers and the cultural politics of their institutions as they affect minorities or interpretations of how minorities have responded to these policies.

Papers should be no more than forty pages in length (Chicago Manual style) and paper abstracts should be at least four pages. Submission deadline is April 30, 1989. Send papers and abstracts to: Professor John H. Stanfield, II, General Editor, *Research in Social Policy*, Sociology Department, The College of William and Mary, Williamsburg, Virginia 23185.

Membership Update

The following members have joined the Society between June 15, 1988 and September 15, 1988. An asterisk (*) indicates a Contributing Membership (\$100-999 per year). A double plus (++) indicates Life Membership (\$5,000 or more).

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