



THE SUPREME COURT
HISTORICAL SOCIETY

Quarterly

VOLUME X

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America's Star: The United States Marshals Service

The gold star badge of the United States Marshals recently graced the hallways of the Supreme Court of the United States in an exhibit celebrating two hundred years of service by these federal law enforcers. Established in September 1789 under Section 27 of the Judiciary Act of 1789, the marshals have carried out the directives and enforced the decisions of the federal court system for the last two hundred years.

Section 27 of the Federal Judiciary Act of 1789 directs that "a marshal shall be appointed in and for each district . . . whose duty it shall be to attend the district and circuit courts when sitting therein, and also the Supreme Court in the district in which that court shall sit. And to execute throughout the district, all lawful precepts directed to him, issued under the authority of the United States, and he shall have power to command all necessary assistance in the execution of his duty. . . ." The Act called for the appointment of two marshals per each of the thirteen judicial districts. George Washington's nominations to fill these positions were made and approved by the Senate within two days of the passage of the bill, and the federal marshals commenced their work.

In the pursuit of their duties, federal marshals have been involved in many of the more notorious events of American history such as The Whiskey Rebellion in 1794, enforcement of the Fugitive Slave Act of 1850, enforcement of prohibition in the 1920's and the armed take-over of Wounded Knee, South Dakota by the American Indian Movement in 1973. The exhibit contains many reminders of these violent activities, including a .45 caliber machine gun used in the St. Valentine's Day Massacre, and a flak jacket, gas mask and tear gas gun used for riot control during the days of desegregation. But many of the assignments carried out by the federal marshals were far more routine. In the 1790s marshals distributed presidential procla-

mations, and from 1790 until 1870, marshals were involved in the mundane duties of taking the national census.

The exhibit, which was prepared by the Smithsonian Institution Traveling Exhibition Service (SITES) for the U.S. Marshals Service, has been divided into four areas which help the viewer understand the duties and history of the organization: U.S. Marshals and the Constitution; The Gunmen; Romance
-continued on page three



Chief Justice William H. Rehnquist and Retired Chief Justice Warren E. Burger cut the ceremonial ribbon to officially open the *America's Star: The U.S. Marshals Service* exhibit in the public exhibition area of the Supreme Court building. Also pictured are Stanley E. Morris, Director of the U.S. Marshals Service, and Brenden J. Byrne, Chairman of the U.S. Marshals Foundation.

A Letter from the President

This letter to you will be confined largely to a report on our fund-raising efforts and where we stand. In the next issue of the *Quarterly* I will report on our Committee activities and the events of the Annual Meeting.

Our endowment fund has grown from \$94,000 as of the date of our last annual meeting to \$347,000 in gifts and pledges to date. This is gratifying, and convinces us that establishing an endowment for the Society is possible.

Our Executive Committee decided to seek a total of \$2,500,000 over a five-year period, although we hope that through a concentrated effort our goal will be reached sooner. However, we operate under two rather unique constraints. We will not seek individual gifts in excess of \$25,000 except in the case of foundations or where circumstances are unusual. Further, we will not conduct a public fund-raising campaign as we see often in colleges and other institutions. The Court is aware of our policy.

It was felt that a full-blown campaign was inappropriate for our Society. We are motivated by a desire to perpetuate the history of the Court. As our name implies, our whole reason for existence is tied to the Court. As a consequence, gifts to the Society might create the impression either of being gifts to the Court or as a means of influencing the Court's judicial functions. Accordingly, gifts to the Society must be above reproach in both intent and substance.

Given these restraints, how do we plan to proceed?

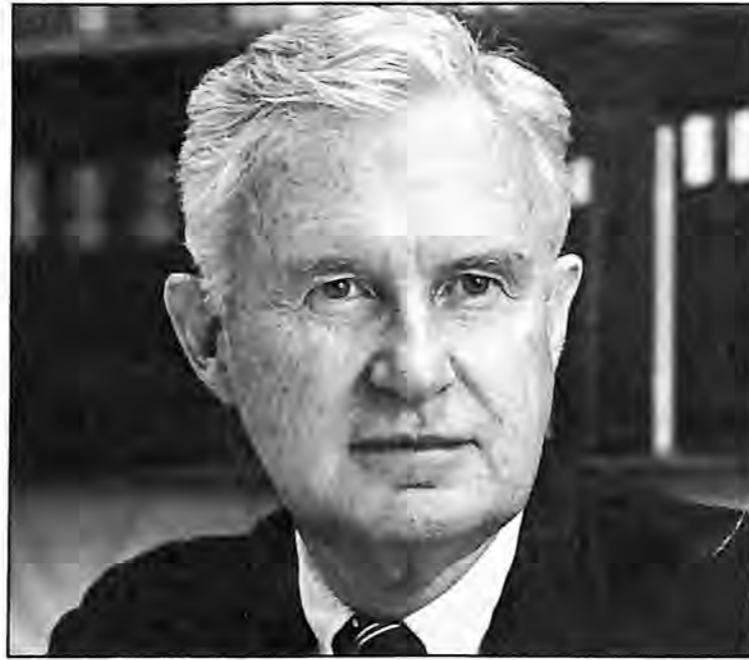
We will seek \$25,000 gifts and pledges from selected law firms. Most firms with an interest in the Society will be asked to contribute \$5,000 per year over a five-year period. While we expect to ask many firms, any suggestions that any member has would be helpful. For example, providing an introduction to a given firm could make the difference between a gift and a rejection.

We will study foundations to see which ones might be likely to support us. Here again, suggestions from you could be invaluable, so please be helpful. Currently, we have proposals before two foundations.

However, the principal resources of our effort will be our own membership. Each of you can expect to be asked for your support. Individual contributions could, in appropriate cases, consist of testamentary bequests.

Photo Credits

Page 1, Opening of Marshals Exhibit, *U.S. Marshals Service*
 Page 3, all photos, *U.S. Marshals Service*
 Page 5, Luther Martin, *The Library of Congress*
 Page 6, Order of Procession, *The Library of Congress*
 Page 8, Clerks of Justice Stone, *courtesy of Mr. Handler*



Society President Justin A. Stanley

We intend to retain a high-quality person with solid experience in raising money to coordinate all of our individual efforts and to advise our own Officers as well as the Special Gifts Committee.

We are encouraged by the efforts of the Special Gifts Committee, chaired by Vincent Burke, Jr., which have already yielded support from the corporations with an interest in what we do.

Not only has Trustee Dwight Opperman made a \$25,000 personal contribution, but West Publishing Company, of which he is the President, has given an equal amount.

We are convinced that our endowment effort, combined with our membership drive, will put the Society in a strong position to carry out its programs. With each *Quarterly* I will give you a brief statement about our progress.

Although the greatest burden will fall upon the Officers and Trustees, the support and understanding of every member is essential if we are to reach our goal. I urge your support.

THE SUPREME COURT HISTORICAL SOCIETY

Quarterly

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Editor Alice L. O'Donnell
 Managing Editor Kathleen Shurtleff

America's Star (continued from page one)

and Reality; The Office of the United States Marshal (1789-1989); and The U.S. Marshals Service.

The popular image of "Marshal Dillon" lingers in the minds of many Americans who visualize a lone United States Marshal single-handedly taming a frontier town of the old west. Many did have experiences similar to those portrayed on television and in the movies, and the exhibit bears this out. The section "Gunmen: Romance and Reality" deals with this aspect of the U.S. Marshals' history. Souvenirs of the "wild west" era on display in the exhibit include Wyatt Earp's shotgun, a pistol which belonged to the infamous Jesse James, and a sidesaddle which belonged to the outlaw Belle Starr. To further enhance the image of the "wild west", the exhibit contains a recreation of a marshal's office, complete with jail cell, badges, weapons and "wanted" posters. The Indian side of the old west is represented by a warrant for the arrest of the famous Indian chieftain Geronimo.

As the pamphlet which accompanies the exhibit points out, for the first 76 years of its history, the U.S. Marshals were the federal lawmen. Other organizations such as the Secret Service (1865), Department of Justice (1870), and the Federal Bureau of Investigation (1908) were created subsequently to address specific needs and to assist with the growing number of duties necessary for law enforcement, "but the Marshals were the first, and their jurisdiction is the broadest." The Marshals were reorganized in 1969 as the United States Marshals Service. Currently there are 93 Marshals, each appointed by the President, and two honorary Marshals. The honorary Marshals are



A pistol and holster worn by outlaw Jesse James in the 1870s rests on a bullet-riddled chest from a Wells Fargo stage coach robbery of the same period.



Since the Civil War, Marshals have battled the Klu Klux Klan. The America's Star collection includes this Klan robe worn in Pulaski, Tennessee, in 1870. former President Ronald Reagan and James Arness, the actor who portrayed Marshal Matt Dillon. The current duties of the Service include pursuit of federal fugitives, protection of government witnesses who are at risk, and the protection of the federal court system and its participants.

Frederick Calhoun, curator for the exhibit and historian of the U.S. Marshals Service, gathered memorabilia from many sources to create the exhibit. Some of the artifacts are on loan from museums and private collections. After the items were located, deputies collected them and they were shipped to Washington in the Boeing 727 nicknamed "Con Air", which is used by the Marshals Service to transport federal prisoners.

The exhibit premiered in the Supreme Court Building and now will travel around the United States to 12 additional sites. The last stop will be Federal Hall in New York City, where the exhibit will be viewed in the spring of 1991. Information concerning the exhibit can be obtained by contacting the U.S. Marshals Service, 600 Army Navy Drive, Arlington, VA 22202.



A "Tommy gun" used by members of Al Capone's gang during the legendary 1929 St. Valentine's Day Massacre in Chicago is included in the exhibit.

The American Solution: Court Hosts Exhibit on the Constitution

Editor's Note: This is the final installment of a three-part series of articles about a collection of manuscripts, prints, maps and documents that is currently on display at the Supreme Court.

George Washington called the writing of the United States Constitution "little short of a miracle." Considering the strength of Anti-federalists throughout the country in 1788, if a miracle took place with respect to the Constitution, it probably occurred during the struggle over ratification. Massachusetts, for example, approved the Constitution by a narrow margin of 187 to 168. So sure of defeat were the Federalist leaders in New Hampshire that when the ratification convention assembled they immediately asked for and won an early adjournment in the hope of meeting at a more propitious time. The outcome was equally uncertain in New York. As the final vote drew near in that Anti-federalist stronghold, even the staunch Federalist Alexander Hamilton expressed a willingness to entertain what he termed "rational recommendations" for compromise.

In Virginia and Pennsylvania, the opposing sides were pledged equally to their causes. In South Carolina, the motion to hold a ratification convention passed by only one vote. Given the political and economic conditions in Rhode Island, the outcome there was a foregone conclusion. Clearly, when the Philadelphia Convention submitted the finished Constitution to the American people, its ratification was in no way certain. The delegates anticipated the possible rejection of their work, but having been challenged by George Washington to raise as high a standard as they could, they committed their handiwork to the suffrages of their fellow citizens, and hoped that a benevolent providence would favor their efforts.

On September 20, 1787, the report of the Constitutional Convention, which included the engrossed copy of the Constitution, the resolution of the Convention concerning procedures for ratification, and a separate letter of transmittal from President George Washington, was laid before the Confederate Congress in New York. When the proposed new government came up for discussion on September twenty-sixth, Richard Henry Lee of Virginia, acting partly on advice from George Mason, immediately rose to the attack.

Lee struggled in Congress to amend the proposed Constitution because he believed sincerely that the Constitution would comprise an excellent system of government if amended. Lee feared that the new system of government would result in certain tyranny if it were implemented unchanged. Lee was still of that opinion when he wrote to George Washington on October eleventh. His essential argument was that the national government, as presented by the Constitution, was too strong. Its President had potential of becoming a king, and its Senate an aristocracy; thus it would convert to an oligarchy. Even worse, Lee believed, the House of Representatives was "a mere shred or rag of representation."

Lee explained in his letter to George Mason of October 1, 1787, which is included in the Constitution exhibit, the reasons for his maneuvers in Congress. "I have waited until now to answer your favor of September tenth from Philadelphia, that I might inform you how the Convention's plan of government was entertained by Congress. Your prediction of what would happen in Congress was exactly verified. It was with us, as with you, this

or nothing; this waged with a most extreme intemperance. The greatness of the powers given and the multitude of places to be created produces a coalition of Monarchy men, Military men, Aristocrats, and Drones whose noise, impudence and zeal exceed all belief. In this state of things the Patriot voice is raised in vain for such changes and securities, as reason and experience prove to be succeeding against the encroachment of power upon the indefensible rights of human nature. Upon due consideration of the Constitution under which we now act, some of us were clearly of opinion that the thirteenth Article of Confederation precluded us from giving an opinion concerning a plan subversive of the present system, and eventually forming a new confederation...."

Lee was but one of many in Congress who opposed ratifying the Constitution. Lee was joined by fellow Virginian William Grayson, Nathan Dane of Massachusetts, and Melancton Smith of New York in an attempt to amend the Constitution before it could be forwarded to the states. Although they failed to alter the document, they did succeed in blocking Congressional endorsement of the Constitution. As it was, the majority in Congress would have nothing to do with approving or rejecting the document. Instead, they followed the resolution of the Convention that specifically required that the plan for the new government "be submitted to a convention of delegates, chosen in each state by the people thereof, under the recommendation of its legislature, for their assent and ratification."

On September twenty-eighth, an Act of Congress acknowledging receipt of the Constitution and ordering copies sent to the respective states was passed. A copy of this Act, written by Charles Thomson, Secretary of Congress, is displayed in the Constitution exhibit. The Act reads that "the United States, in Congress assembled, resolved unanimously: that the said Report, with the Resolutions and Letter accompanying the same, be transmitted to the several legislatures, in order to be submitted to a Convention of Delegates, chosen in each State by the People thereof, in Conformity to the Resolves of the Convention, made and provided in that case."

The divisive struggles that took place in the Confederation Congress were repeated in many of the state ratification conventions. One of the leading opponents to ratification was George Mason. Mason wrote *Objections to the Constitution of Government formed by the Convention* before he left Philadelphia in September of 1787. A short time later he transcribed several copies of the documents, and one of those copies went to the Pennsylvania opposition party. One copy was sent to George Washington, who took the liberty of extracting key points of *Objections...* and forwarding them to James Madison. One copy that was sent to Philadelphia fell into the hands of a local printer and was published, "very incorrectly", according to Mason. That action angered Mason, because it exposed him to attack from many directions. The incident also served to persuade George Mason actively to oppose the Constitution in the state of Virginia.

In Virginia, Patrick Henry and George Mason represented a formidable obstacle to ratification. When the Virginia ratification convention began its debates on June fourth, 1788, the delegates appeared to be, as described by William Grayson,

about equally divided for and against the Constitution. George Mason and Patrick Henry, leaders of the opposition in Richmond, could not agree on tactics. Henry wanted to kill the measure outright; Mason preferred to defeat it piecemeal. In reality, Mason would have been helping his opponents, as they had planned to consider the document clause by clause. The resulting confusion gave Federalists a slight advantage which led to eventual ratification.

The state ratification convention in Maryland, as in Virginia, was divided decisively. Although the Maryland financial community and its related interests supported ratification of the Convention, Luther Martin, in his report to the Maryland House of Delegates, attacked the document as the product of a secret conspiracy carried out at the Philadelphia Convention. The fact that the Convention had met behind closed doors and had retained few records of its deliberations lent considerable weight to Martin's arguments. The fiery Martin went on to charge that certain Delegates to the Convention had altered the Constitution to their satisfaction during the final days of the debate when their opponents were too weary to continue battling. The tone and blatant prejudice that colored Martin's speech provoked a negative reaction from the Assembly, and some of the delegates interrupted Martin "in a manner not the most delicate."

The delegates were more receptive on November twenty-ninth, 1787, when James McHenry gave his report to the Maryland House of Delegates. McHenry began by presenting a copy that he had made of the Virginia Resolutions. These he described in considerable detail, giving an account of the organization and powers of each of the three proposed branches of government. McHenry himself had been a reluctant signer of the Constitution, and may have done so only after being encouraged by George Washington. He explained his decision to support the Constitution by stating that although he "could not approve of it throughout, [he] saw no prospect of getting a better. The whole, however, is the result of that spirit of Amity which directed the wishes of all for the general good, and where those sentiments govern, it will meet with a Kind and Cordial reception." The delegates were moved by the appeal of McHenry, and ratified the Constitution in April 1788.

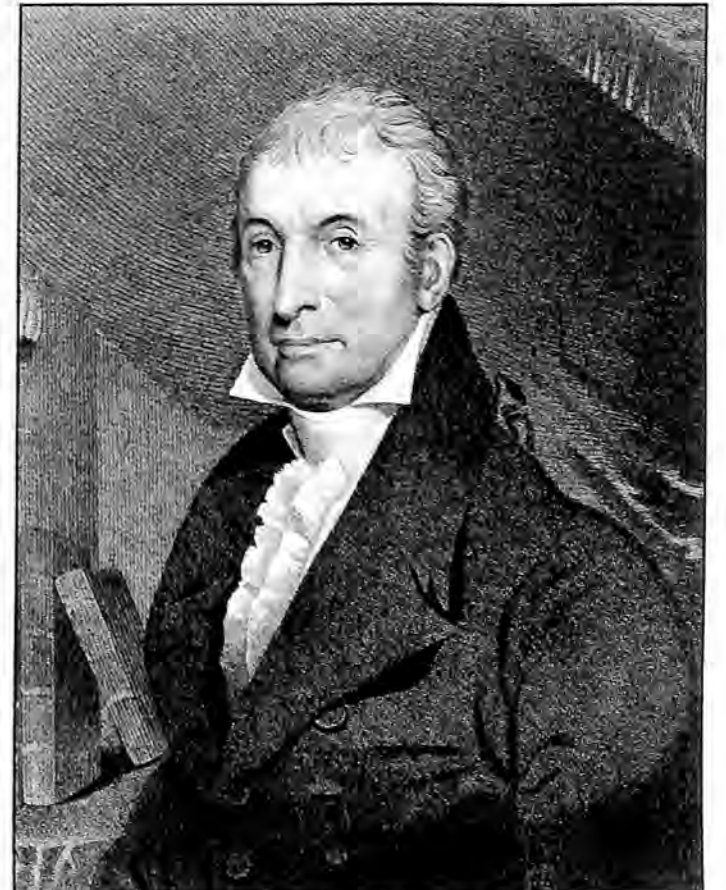
The ratification process in Maryland was much the same as that in Pennsylvania. James Wilson's famous State House Yard speech had a decisive effect upon the delegates to the state's ratification convention. The speech was circulated widely during the ratification struggles. Wilson won support for the document when he spoke: "I will confess, indeed, that I am not a blind admirer of this plan of government, and there are some parts of it which, if my wish had prevailed, would certainly have been altered. But, when I reflect how widely men differ in their opinions, and that every man has an equal pretension to assert his own, I am satisfied that anything nearer to perfection could not have been accomplished. If there are errors, it should be remembered that the seeds of reformation are sown in the work itself, and the concurrence of two-thirds of the Congress may at any time introduce alterations and amendments. Regarding it then, in every point of view, with a candid and disinterested mind, I am bold to assert that it is the best form of government which has ever been offered to the world."

The minority delegates to the Pennsylvania ratifying

convention, aided by a copy of George Mason's *Objections to the Constitution*, might have prevented that state's quick ratification of the Constitution had it not been for some deceptive actions on the part of Federalist delegates. Pennsylvania ratified the Constitution December twelfth, 1787 by a vote of forty-six to twenty-three. Opponents of ratification continued to fight in the press. One opposition essay, displayed in the exhibit, is entitled *Address and Reasons of Dissent of the Minority of the Convention of the State of Pennsylvania to their Constituents*. The authors attacked the secrecy rule of the Pennsylvania Convention and argued that the nation was too large to be governed except as a confederation of independent republics. They believed that the proposed government would destroy the various state governments and result in "an iron-handed despotism." The authors intended to use the press in order to influence the ratification conventions of other states.

The essays published in the New York press, which came to be known as the *Federalist Papers*, are the most famous use of the press during the ratification period. Alexander Hamilton was so pleased with the arguments of Jay against the probability of assembling a new federal convention in any way equal to the Philadelphia Convention that he retained a copy of Jay's *Address to the People of the State of New York on the Subject of the Constitution* for his own use. Hamilton's copy is included in the Constitution exhibit and shows his notes in the margin which convey his excitement about the work.

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Luther Martin was known as the Attorney General of Maryland, because he held that post for thirty-one years. Martin defended his friend Samuel Chase in his impeachment trial, defended Aaron Burr when he was accused of treason, and argued for Maryland before the Supreme Court in *McCulloch v. Maryland*. In his later years, Martin became impoverished and his health failed; he spent his last years under the care of Aaron Burr.

Constitution Exhibit (continued from page five)

Hamilton added to Jay's argument by asserting that it would be far better to try to amend the Constitution after the adoption of the new government. Hamilton went on to explain, "The moment an alteration is made in the present plan, it becomes, to the purpose of adoption, a new one, and must undergo a new decision in each state. For its complete establishment throughout the union, it will require the concurrence of thirteen states. If, on the contrary, the Constitution proposed should once be ratified by all the states as it stands, alterations on it may at any time be affected by nine states."

Alexander Hamilton made an outline, which is displayed, for a speech delivered in the New York ratification convention in June of 1788. Hamilton was the last speaker of the day, as most of the day had been used for debate between Robert R. Livingston and the leading Anti-federalists in that convention, John Lansing and Melancton Smith. Hamilton's speech was not concluded until late the following day. His argument concerned the weakness and impracticality of the Articles of Confederation. His own notes are made up of a few scribbles and a note to make a hand gesture. His speech, however, inspired at least three delegates to take copious notes.

Richard Harrison, a prominent New York lawyer, described Hamilton's speech as follows: "Mr. H. - Bravo! As far as it went one of the most excellent energetic Speeches that ever I heard. He began by displaying the form of the proposed Constitution, shewing [sic] that it was truly Republican- that if the government was truly deserving of Confidence all Confidence should be placed in it otherwise it could not answer the Purposes of Government. That the Situation of the Country might require the use of all its Resources. That as to direct Taxation the two governments possessed concurrent jurisdiction, that it was not probable they would interfere. That the Authority of Congress to make Laws which were the Supreme Law of the Land did not imply that the State laws where they have concurrent Jurisdiction should not also be Supreme."

The continuing intense debate in the New York state ratifying convention was confined for the most part between Alexander Hamilton and Melancton Smith. However, when New York papers published the news that Virginia had ratified the Constitution, Smith was persuaded to switch sides. It was Melancton Smith who made the motion to ratify the Constitution. The New York convention ratified the new government on July 26, 1788, by a margin of only three votes.

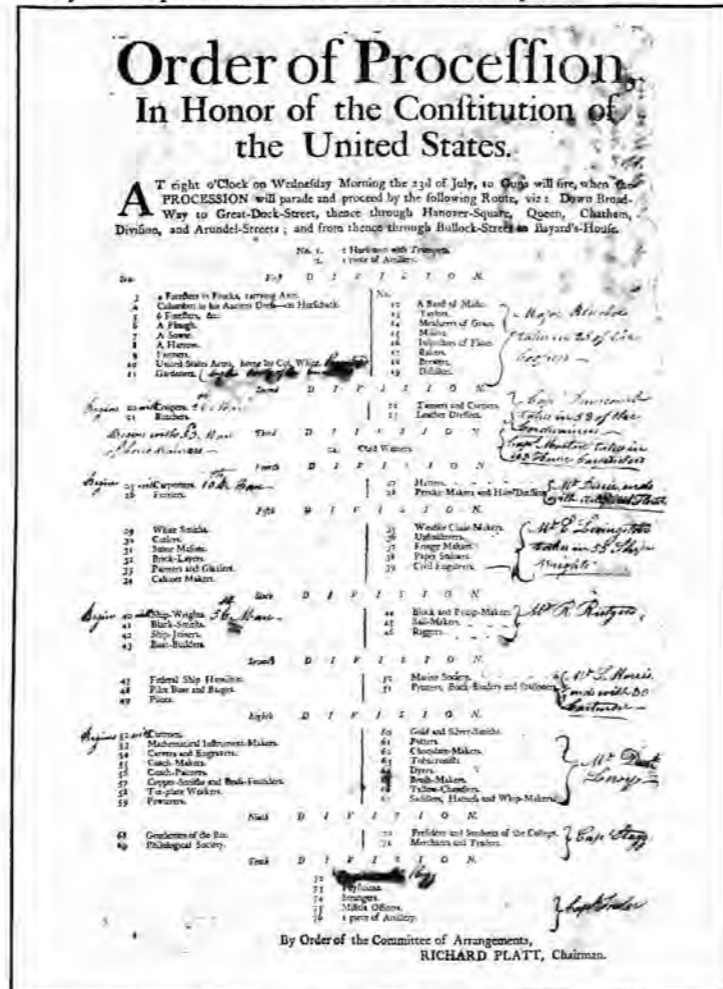
By the summer of 1788, only North Carolina and Rhode Island had not ratified the Constitution. Only when these two states were in danger of being treated as foreign countries by the new government did they call conventions and ratify the Constitution, North Carolina on November 21, 1789, and Rhode Island on May 29, 1790.

The Continental Congress had begun transferring to the new system of government almost two years earlier. On September 13, 1788, the Continental Congress directed States to

begin choosing electors of the President. The electors met and cast their votes the first Wednesday in February. The new government was to have begun operating in New York on the first Wednesday in March; however, the newly elected Congress did not have the necessary quorum to declare the electoral vote until April 6, 1789. After years of tremendous struggle, the government of the United States began actual operations under the Constitution.

The celebrations that accompanied the ratification of the Constitution were, by modern standards, somewhat restrained. Americans living in the eighteenth century celebrated their achievements with almost Puritanical austerity. Such constraint was considered to be an act of virtue, but in most cases, hardships were such that lavish parties were not a viable alternative. Still, the people marched through the streets, sang patriotic songs, decorated ships in their harbors, and built symbolic floats, statues, and engravings. The symbolism of these works shows the renewed optimism and hope that prevailed in America following the ratification of the Constitution. Liberty, justice, and prosperity were more than just a dream to the men that formed and put into motion the system of government embraced in the United States Constitution.

The Constitution exhibit will remain on display indefinitely in the public exhibition area of the Supreme Court.



There is an interesting personal quality to the way Americans celebrated the adoption of the Constitution. In this printed form of the Order of Proceffion, individual citizens, listed by name, carry key symbols of national accomplishments. Military officers led the parades, followed by forresters, farmers, judges and merchants. Artisans made up the middle of the parade, with clergymen, physicians and "strangers" bringing up the rear.

Membership Update

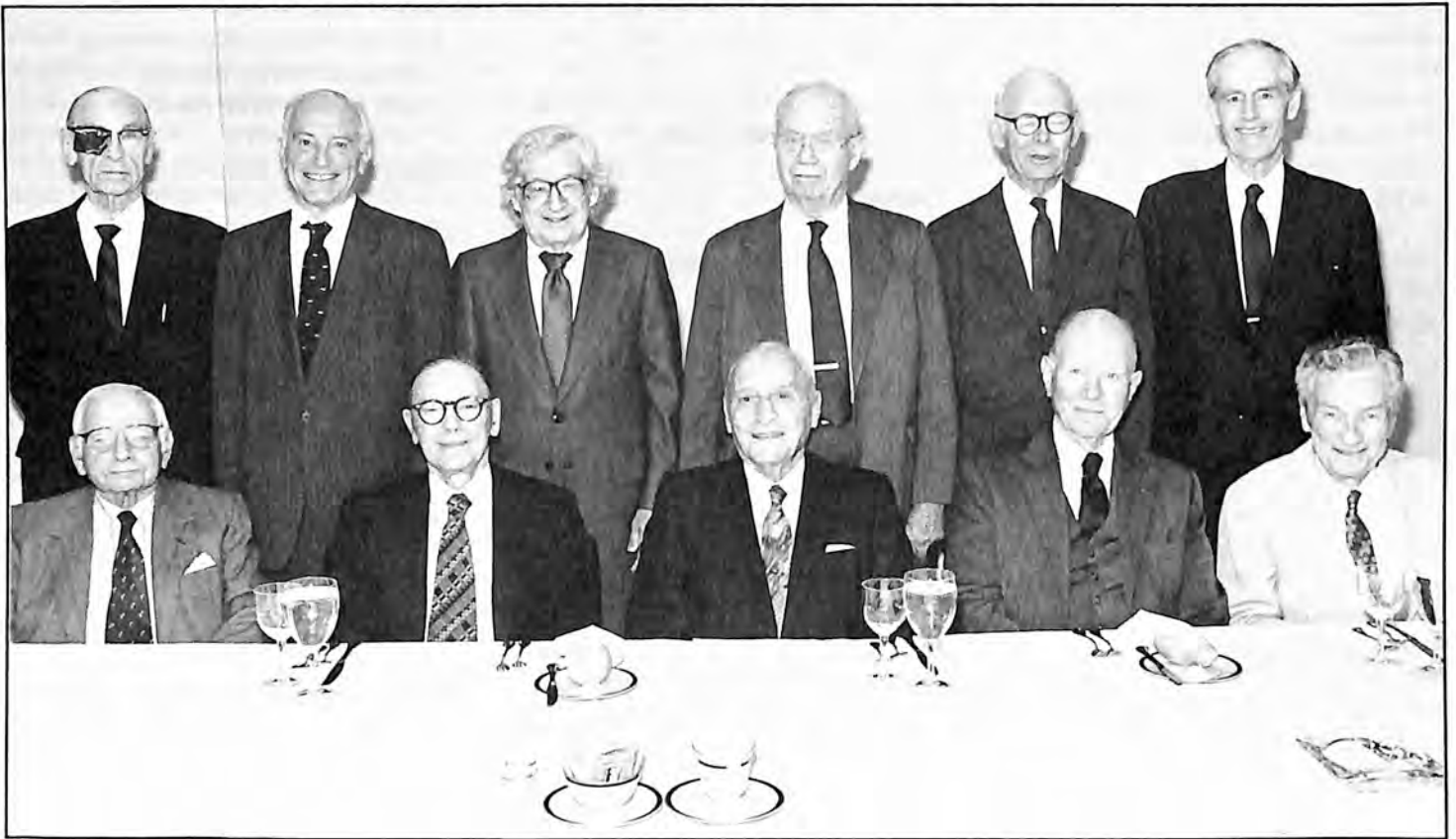
The following members have joined the Supreme Court Historical Society between January 1 and March 31, 1989.

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Shirley A. Succurro, Charleston |

Erratum

In the Griswold article which appeared in the last issue of the Quarterly, Senator McCarthy was erroneously identified as Senator Eugene McCarthy. The article refers to Senator Joseph McCarthy. The Society regrets the error.

Reunion Held for Law Clerks of Chief Justice Harlan Fiske Stone



On October 6, 1988, Milton C. Handler hosted a luncheon for ten of the former law clerks of Justice Harlan Fiske Stone, later Chief Justice of the United States. Those who attended are: (seated, left to right) Herbert Wechsler, Wilbur H. Friedman, Milton C. Handler, Walter Gellhorn, Howard C. Westwood; (standing, left to right) Lauson Stone, son of the Justice, Bennett Boskey, who also served with Chief Justice Hughes, Edward Friedman, Louis Lusky, C. Roger Nelson, and Eugene H. Nickerson.

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