Membership Committee Appoints Twenty-Eight Additional State Chairmen

According to its Chairman, Justin A. Stanley, the Membership Committee has appointed twenty-eight new state membership chairmen to assist in this year's membership drive. This brings the total number of state chairmen to forty-eight, including those listed in the last issue of the Quarterly.

Mr. Stanley, and fellow committee members Griffin B. Bell and J. Roderick Heller, III, are recruiting volunteers to serve as state membership chairmen as part of the most significant membership drive undertaken since the Society's inception. The goal of this campaign is to increase the Society's membership from its current 2,500 to approximately 4,000 members. Additional announcements concerning the state chairmen will be published in the Quarterly as they are appointed. The most recent appointees are as follows:

Alabama  
N. Lee Cooper, Esq.  
Maynard, Cooper, Prierson & Gale  
Watts Building, 12th Floor  
Third Avenue & Twentieth Street  
Birmingham, AL 35203

Arizona (Tucson)  
Thomas Chandler, Esq.  
Chandler, Tuller, Udall & Redhead  
1700 Arizona Bank Plaza  
33 North Stone Avenue  
Tuscon, AZ 85701

Arizona (Phoenix)  
Calvin H. Udall, Esq.  
Fennemore, Craig, Von Ammon, Udall & Powers  
Suite 1700  
100 West Washington Street  
Phoenix, AZ 85003

California (Los Angeles)  
Stuart L. Kadison, Esq.  
Kadison, Pfaelzer, Woodard, Quinn & Rossi  
707 Wilshire Boulevard  
Los Angeles, CA 90017

California (San Francisco)  
Burnham Enersen, Esq.  
McCutchen, Doyle, Brown & Enersen  
40 Arguello Boulevard  
San Francisco, CA 94118

Connecticut  
James R. Greenfield, Esq.  
Greenfield, Krisk & Jacobs  
205 Church Street  
P.O. Box 1952  
New Haven, CT 06509

Annual Meeting Notice

Invitations to the Society's tenth annual meeting, on May 13, 1985, will be mailed to members in the first week of April. The invitations will include a schedule of events and a reservation card for the evening's annual reception and dinner. Members who wish to attend those two events should return their reservation cards and payment promptly to assure acceptance.

No reservation or advance notice is required for events other than the annual reception and dinner. However, due to the limited seating capacity in the Capitol's Restored Supreme Court Chamber, members who wish to attend the annual lecture held in that room at 2:30 p.m. are urged to arrive early to assure seating.

This year's annual lecture will be delivered by Judge Antonin Scalia of the U.S. Court of Appeals for the D.C. Circuit. Judge Scalia is a graduate of the Harvard Law School and a former Assistant Attorney General. Prior to his judicial appointment he served on the faculties of several of the nation's prominent law schools, including the University of Virginia, the University of Chicago, Harvard, and Stanford.

Following the annual lecture, members are invited to visit the Society's headquarters building at 3:30 p.m. where refreshments will be served. The membership meeting will be held in the courtroom of the Supreme Court building at 6:30 p.m. following the meeting of the Board of Trustees.
Ohio
John C. Elam, Esq.
Vorys, Slater, Seymour & Pease
52 East Gay Street
Columbus, OH 43215

The Society greatly appreciates the willingness of these individuals to volunteer their time and energy, and urges members to lend them their full support and cooperation.

Benjamin Robbins Curtis: The Yankee Who Stepped Down from Olympus

When Justice Levi Woodbury of New Hampshire died in 1851, President Millard Fillmore determined to replace him with someone of the Whig party to counteract the preponderance of southern Democrats on the high bench. He wrote to Daniel Webster, his Secretary of State, setting out the qualifications he was seeking:

[i] and desires of obtaining as long a lease and as much moral and judicial power as possible from this appointment. I would therefore like to combine a vigorous constitution with high moral and intellectual qualifications, a good judicial mind, and such age as gives a prospect of long service.

After setting forth these requirements President Fillmore asked Webster for his opinion of “Mr. B. R. Curtis. What do you say of him? What is his age? Constitution? Legal attainments? Does he fill the measure of my wishes?”

Benjamin Robbins Curtis filled the measure of Fillmore's requirements in every way. Born in 1819 in Watertown, Massachusetts, Curtis, in 1851, was 42 years old and the epitome of a successful Boston lawyer. Like many prominent New Englanders, Curtis was something of a self-made man. His father, Benjamin Curtis, III, a ship's captain, was lost on a voyage to Chile when Curtis was only five years old, leaving Benjamin's mother, Lois Curtis, to care for him and his brothers. She accomplished this by starting a dry goods business and a circulating library. While the dry goods store probably supplied the majority of the family's income, it was from the library that Benjamin derived most of his intellectual sustenance, devouring books as rapidly as they became available. Not surprisingly, Curtis proved to be an apt and dedicated student. He studied with several outstanding teachers, including John Appleton, who later became the chief justice of Maine, and qualified for admission to Harvard. He entered Harvard in 1835, his tuition paid by his faithful mother who ran a boarding house for under-graduate students in Cambridge. Graduating in 1830, Curtis decided to continue his studies. Perhaps due to the influence of his uncle, Harvard Professor George Ticknor, Curtis enrolled in Harvard Law School which was under the direction of Joseph Story. In addition to his judicial responsibility, Justice Story was also serving as the Dane Professor of Law at Harvard Law School. Under his supervision the Law School became an effective, professional institution. The students held moot courts, charged juries and approached all aspects of legal education from a practical and realistic viewpoint. Professor Story even had the students render decisions on cases that were currently pending before the Supreme Court.

Curtis took a break from law school to prepare himself financially for marriage by taking over the law practice of a lawyer in Northfield, Massachusetts. There, he later reported, he was "obliged to rely upon my own investigations—often my own inventions—to help me through difficulties and novelties." Returning to Harvard briefly, Curtis finished his studies and was admitted to the bar in August 1832.

In 1834 Curtis joined the law firm of a distant cousin,
Curtis (continued from page three)

Pay little attention to the good side of the case at first, that side will take care of itself, but be sure you look well into the bad side—not forgetting to explore the strongest form of proof, and knowing that an opportunity to prove even what is false may be used by your adversary unless you have certain means to refute it.

Never try to dispute what has not been proven, and supply thereby the missing link in the enemies’ chain of evidence.

Never forget that an innocent person, with enemies, may be in a more dangerous position than a guilty one with friends and influence.

The pulse of the people beat nearest together through the columns of the press, and a few wicked papers may tell a jury much in half sessions of so occurrence that will shade the whole story of it unawares.

Curtis was also careful to limit himself in his practice so that he never felt he was over-extended and unable to give each case the attention it deserved. He once criticized a contemporary, saying, “He has always had too much business to be a good lawyer.”

Although Curtis became adept in virtually every type of law, he specialized in questions of commercial law, maritime law, and bankruptcy law, and he argued so many patent cases, that he became known as one of the first patent attorneys in the United States. His reputation and law, he specialized in questions of commercial law, maritime

Contemporary accounts tell us that this legal genius was of rather average appearance, being of average height, somewhat stocky in build, with a pleasant, but basically unremarkable face enlivened by expressive eyes. His voice was well modulated and did not seem to change much he spoke, reasonable, impassionate presentations in court. He was by nature, sedate and sober, and while he was generous and warm with his family and close friends, he maintained a certain austerity in public, later succeeded Story as Circuit Court of Massachusetts, and almost as many before the First Circuit Court of the United States in Boston. As testament to his reputation and standing, Curtis was appointed at the age of thirty-six as a fellow of the Harvard Corporation to represent the late Justice Story; indeed an indication of his professional and social standing in the Boston community.

Reverdy Johnson, a distinguished advocate himself, praised Curtis for his professional techniques, stating that his arguments at the bar possessed ... sterling merit. The statement of his case, and the points which is involved were always transparently perspicacious, and when his premises were conceded or established, his conclusion was necessary sequence. His analytical and logical powers were remarkable. In these respects, speaking from the knowledge of the great men whom I have heard during a very long professional life, I think he was never surpassed. He was always calm, dignified, judicious and, therefore, persuasive. No lawyer who heard him begin an argument ever failed to remain until he had concluded.

One of Curtis’ greatest achievements during his career as a practicing lawyer was the passage of legal reforms which he was able to bring about while serving in the Massachusetts legislature from 1849 to 1851. After introducing legislation to create a commission for judicial reform, he was subsequently appointed chairman of the commission. Taking his characteristic reasonable, realistic approach, Curtis proposed attacking initially not the entire problem, but only the worst part of it. His proposal sought to frame new codes of court procedure, which rationalized and streamlined common law actions by simplifying issues, eliminating witnesses, speeding up trials, and increasing direct examination. After two years of hard work this plan became the basis of the Massachusetts Practice Act of 1851, which not only furthered Curtis’ standing, but also brought Massachusetts to the forefront of those states working for legal reform.

While basically remaining on the fringes of politics, Curtis nevertheless did much for the American political scene. The political arena was becoming increasingly volatile and factionalized, with slavery being the most controversial and divisive issue. Companionship had been struck in the hopes of avoiding outright conflicts, but the basic issues remained unresolved and threatened to erupt at any moment. The Whig Party had become essentially a party predicated on compromise for preservation of the union and its power and influence were already waning. Upon succeeding to the presidency after the death of Zachary Taylor, Fillmore, a Whig, then found himself a president without a viable political base. Undermining his political coalition were such varied factions as the “Know Nothing” Democrats, Free Soilers, Abolitionists and pro-slavery Democrats.

At this juncture, President Fillmore found himself with the opportunity to appoint an associate justice of the Supreme Court. His desire to find a person politically acceptable and eminently qualified in every other way was heightened by his sense of the growing unrest in the country. Many Americans had begun to feel that the issue of slavery would have to be resolved in the judicial system as the legislative and executive branches of the government seemed powerless to solve the problem. The latest compromise had been the unpopular Fugitive Slave Act. As Curtis had publicly defended the constitutionality of the Fugitive Slave Act in the very heart of New England where its opposition was the strongest, he seemed eminently suitable to the followers of the Whig Party for an appointment to the Supreme Court bench. His legal accomplishments made his appointment easily attainable, with the only real protest being voiced by the abolitionists. After a minor delay of eighteen days, Curtis’ nomination to the Supreme Court was confirmed on December 20, 1851.

Entitled “Practical Illustration of the Fugitive Slave Law,” this 19th Century political cartoon depicts some of the political controversy which surrounded this legislative compromise on the slavery issue. Curtis’ public defense of the Act helped bring him to President Fillmore’s attention and in 1851 Fillmore nominated Curtis to the High Bench.

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Associate Justice Joseph Story (above) was on Harvard's faculty when Curtis attended that school. Curtis later succeeded Story as a fellow of the Harvard Corporation.
The Anti-Federalists: Our Other Founding Fathers

Dr. Bradford Wilson, California State University, San Bernardino, Cal.*

The United States bears the bicentennial of the drafting and ratification of its Constitution, and the 200th anniversary of its first national government under that Constitution. The thirst for knowledge of the words and deeds of America’s founding statesmen is appearing in a significant part of the population, as one of the greatest opportunities for civic education ever to arise in the nation’s history is seized upon. The names of Washington, Hamilton, Madison, and Wilson will forever be associated with the adoption of the Constitution and the preservation of individual rights. For it is that remarkable generation of political leaders that must shoulder the lion’s share of responsibility, and accompanying glory, for the constitutional design of the nation, with its far-reaching consequences.

In the Constitution of the United States, the most wonderful instrument drawn by the hand of man, there is a comprehension and precision that is unparalleled, and I can truly say that, after spending my life in studying it, I still daily find in it some new excellence.

A shadow of skepticism, however, has followed the Constitution in its historical journey. The original skeptic, or “men of little faith,” as one scholar dubbed them, were those who opposed the adoption of the Constitution and the ratification struggle of 1787-1788. The pro-ratification party referred to them as “Anti-Federalists,” a name which created much confusion as it evolved. What is certain is that the drama of American founding cannot be adequately understood without an understanding of the indispensable role played by the arguments of the Anti-Federalists.

Fortunately, constitutional pedagogy in this bicentennial era is no longer bereft of a comprehensive collection of Anti-Federalist thought. The University of Chicago Press has published a seven-volume annotated edition of all the substantial Anti-Federalist writings in their complete original form. Entitled The Complete Anti-Federalist, the collection is masterfully edited by Herbert Storing, now deceased. Volume I consists of Storing’s thorough introduction to Anti-Federalist political thought, which also has been published separately as a paperback under the title What the Anti-Federalists Were For. This first volume also contains the Articles of Confederation, the Constitution, and the first ten Amendments, all key documents to the Anti-Federalist writings in subsequent volumes.

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**Continued on next page**
Anti-Federalists (continued from page seven)

would create a government of virtually unlimited powers. The lack of sufficient democratic accountability in the representative body, especially the Senate, and the complex character of the institutional scheme, which waters down responsibility, further deprive the government of proper limits. The states themselves would be incapable of erecting any meaningful constitutional barriers to the excessive use of federal power, for, unlike government under the Articles of Confederation, there would be no participation of the states in the operation of the new government. The absence of explicit reservations in behalf of states' rights exacerbated the danger.

The major constitutional legacy of the Anti-Federalists is, of course, the Bill of Rights. In their view, unlimited power (particularly in the area of taxation) and inadequate representation in the legislature were leading features of the federal government under consideration. And, in the words of An Old Whig:

who shall judge for the legislature what is necessary and proper?...No one, unless we had a bill of rights to which we might appeal, and under which we might contend against any assumption of undue power and appeal to the judicial branch of the government to protect us by their judgements.

It must be said, however, that the Anti-Federalists were typically somewhat pessimistic about the practical utility of this kind of "parchment barrier" against a government bent on usurpation. As Mr. Storing writes, "The fundamental case for a bill of rights is that it can be a prime agency of that political and moral education of the people on which free republican government depends." A bill of rights serves as a reminder of the ends of republican government and, if rightly understood, will strengthen the people's attachment to it.

Mr. Storing concludes that the Anti-Federalists lost the ratification debate because they had the weaker argument. They were in fact guilty, in Hamilton's (Publius') words, of "attempt[ing] to reconcile contradictions," instead of "firmly embracing a rational alternative." They wanted both union and state sovereignty, the great republic and the small virtuous community, a commercial society and a simple, moderate, sturdy citizenry. But, as Mr. Storing also suggests, the Anti-Federalists' honest recognition of the problematical character of this great constitutional experiment is part of their strength and even glory.

It is sufficient to point to the subsequent adoption of a Bill of Rights to establish the justice of ranking the Anti-Federalists among the Founding Fathers. There is a deeper reason for such consideration, however. While the adoption of the Constitution settled many questions, it did not settle in all respects the shape the American polity would take. As Mr. Storing writes:

[If... the foundation of the American polity was laid by the Federalists, the Anti-Federalist reservations echo through American history; and it is in the dialogue, not merely in the Federalist victory, that the country's principles are to be discovered.

[In a future article, we will examine the Anti-Federalist views of the federal judiciary and its powers as provided for in the proposed Constitution.]

Society Activities

Admission to the Supreme Court Bar

Arrangements have been made with the Clerk of the Supreme Court for a mass admission of members of the Society who desire, and are eligible, to be admitted to the Supreme Court Bar on the day of the Annual Meeting, Monday, May 13, 1985, at the opening of Court at 10:00 a.m. Members of the Society desiring to be admitted should advise the Society office without delay, in order to receive, and return to the Clerk, the necessary application form and admission fee.

Capital Gifts

Through the effective efforts of Justin Stanley of Chicago, the Society has received contributions from the Gossett Foundation, Judge Griffin Bell, J. Roderick Heller, III, John Shepherd, Frank C. Jones, and Justin Stanley himself for the purchase of a two-terminal IBM PCXT computer system with printers and appropriate software programs. The system, which is now in place, will be used to support membership record-keeping and other Society functions.

Acquisitions

The Society wishes to thank Wilfred C. Varn, Esq. of Tallahassee, Florida for his recent gift of nine "galley opinions" of the Supreme Court from the 1913-1914 period. These galley opinions were distributed by the justice assigned to write the opinion to the other justices for their review, concurrence or dissent. Several of the opinions received by the Society from Mr. Varn contain the handwritten endorsements and comments of Justice Oliver Wendell Holmes, Jr.

Publications

The Society's publication, Index to Opinions, the first available resource identifying by each justice all of the Supreme Court's opinions over the last two centuries, has been reviewed by various publications and termed "essential" for those engaged in serious research on the Court.

The documentary history project, "The First Decade of The Supreme Court, 1789-1800," jointly sponsored by the Supreme Court and the Society with the support of the National Historic Publications and Records Commission, is moving toward the publication of Volume I, Parts 1 and 2, dealing with the first appointments to the Court and the official records of the Court, etc....Page proofs have been received from the publisher for final checking and it is expected that this long awaited volume will be available within the next few months to scholars and others interested in the early years of the Court.