Society Plans Twelfth Annual Meeting

Plans for the Society's Twelfth Annual Meeting are being finalized. The meeting will be held Monday, May 18, 1987 in Washington, D.C. The first event of the day will be the Annual Lecture which will be given in the Restored Supreme Court Chamber in the Capitol building at 2:30 PM. This year's lecture, entitled "The Relationship of Church and State in American Constitutional Law: A Bicentennial Reflection," will be given by the Honorable Kenneth W. Starr, United States Circuit Judge, District of Columbia. Judge Starr's legal career prior to his appointment to the Circuit Court included service as a Law Clerk to Chief Justice Warren E. Burger from 1977-1980, work in private practice, and service as Counselor to the Attorney General, U.S. Department of Justice, 1981-1983.

A special tour of the Supreme Court Building is scheduled for 4 PM for those interested. The Annual Meeting of the General Membership will take place at 6:30 PM in the Supreme Court Chamber, with the Meeting of the Board of Trustees to follow. The reception will begin at 7:00 PM with dinner to follow at 8 PM. Members will receive formal invitations and reservation cards the first week in April.

Members are reminded that because of space limitations and the popularity of this event, each member will be limited to one guest. Those members desiring to bring additional guests are encouraged to make gifts of a year's membership in the Society to such guests. One gift membership would allow a member to bring a spouse and an additional couple to the dinner.

Reservations for the Reception and Dinner are taken on a first-come, first-served basis when the reservation card and payment are received at the Society's office.
As we approach the Bicentennial of our Constitution, we have a massive communications task before us. The American people, by and large, know far too little about the Constitution, how it came into being, and how difficult it was to achieve. Yet we tend to take it for granted. A 1979 Gallup poll, for example, showed that 76 percent of adult Americans did not know the subject matter of the First Amendment. Four years later, an article in U.S. News & World Report noted that nearly 25 percent of the 7-year-olds polled thought it was illegal to start a new political party.

To remedy this situation, members of the legal profession can and should play a leading role in telling the great story of the Constitution to the American people. Just as members of the legal profession of the late eighteenth century played a leading role in framing this unique document and explaining it to their countrymen, lawyers must play a major role today.

Since the earliest days, there has been a need for public-spirited, articulate men and women to explain the fundamental principles under which we grew from a wilderness with less than four million people to a world power of nearly 230 million. Men like George Washington, James Madison, and Alexander Hamilton, for example, recognized very early the need for a stronger national government to take the place of the loose alliance, beset by regional and parochial differences, that existed under the Articles of Confederation. But it took a great deal of effort to get that message across to the American people in the late eighteenth century.

When the thirteen former colonies joined together under the Articles of Confederation, they did so as separate, independent, sovereign states. In many respects, the Articles themselves reappeared as a multilateral treaty among independent nations, reflecting the jealousies among the thirteen states. Article III stated: "the said states hereby severally enter into a firm league of friendship with each other..." a "firm league of friendship" to carry on a war against a great world power!

The government created by the Articles was extremely weak, with no power to levy taxes and no authority to raise armies. One of the states, for example, had paid nothing in the way of taxes or contributions to the Confederation for at least five years before the meeting in Philadelphia. The soldiers under Washington often furnished their own clothing, their own rifles and sometimes even their own gunpowder. These conditions led to death and disease during that harsh winter at Valley Forge, only a few miles from where the Constitutional Convention later met. Indeed, with such a government, it is wonder the Revolution was successful, and that there was any occasion to convene delegates in Philadelphia.

The weakness of the Confederation no doubt helped shape the political philosophies of Washington and some of his officers, convincing them that a stronger central government was imperative. John Marshall, for example, was a young lieutenant with Washington at Valley Forge during that terrible winter. His views on the need for a strong national authority later led him to fight for ratification of the Constitution in his native Virginia. Years later this view influenced the opinions of the Supreme Court when Marshall became Chief Justice. Alexander Hamilton, one of Washington's staff officers, saw the necessity of a stronger central government not one that appealed to "the narrow colonial sphere in which we have become accustomed to move" under the Confederation, but rather an "enlarged kind suited to the government of an independent nation."

Soon after the battle of Yorktown, the rivalries among the states and regions strained the Confederation almost to the breaking point and generated serious economic problems. Each state was free to set up trade barriers, each could issue its own currency, and some treated citizens of other states as aliens. Merchants and businessmen wanted and needed a
Burger (continued from page three)
system that would open the channels of trade and commerce 
and in turn stimulate manufacture.

To convert the thirteen state sovereigns into a true nation, it was 
 imperative that trade barriers be abolished and that the 
 thirteen states have a common currency, a central revenue 
 system, a central banking system, a central authority to deal 
 with commerce between the states and with other nations, 
 and the power to raise and support armed forces. George Washing-
 ton and others attempted to resolve some of these difficulties—
 beginning with such efforts as the Mount Vernon conference, 
 which dealt with navigation on the Potomac and Chesapeake Bay— 
 but quickly realized that piecemeal solutions were inadequate.

Convincing the states of the need for a stronger central 
government was no easy task in 1787 and 1788, however. During 
 the Eighteenth Century and, indeed, well into the Nineteenth, 
 many people tended to think of themselves as Virginians or 
 New Yorkers first and Americans second. It is recorded that 
 during the Revolution, when New Jersey troops reporting for 
 duty at Valley Forge were asked to swear allegiance to the 
 United States, the soldiers declined, saying, "New Jersey is our 
 country." Another difficulty was a deep-seated fear of strong central 
governments, stemming no doubt from the fact that the American 
 people had only recently fought a revolution to escape from the distant, strong, 
 insistentive central government in London. This fear was reflected in the action of the 
 Continental Congress when it met in New York early in 1787 to 
 consider acting on the resolution of the 1786 Annapolis 
 Convention for a constitutional convention. Washington, 
 Hamilton, Madison and others had worked tirelessly to 
 persuade their countrymen of the need for a true constitutional 
 convention. Madison had persuaded the Annapolis convention to invite the states to send delegates to 
 such a convention in Philadelphia in the spring of 1787, and had 
 finally succeeded in getting the Continental Congress to 
 convene a full-scale constitutional convention. Its mandate 
 was narrow and explicit: The meeting was called "for the sole 
 and express purpose of reconsidering the Articles of Confederation." 
 There was no hint of drafting a new constitution.

Several prominent Americans were so fearful of a strong 
central government that they strongly opposed the creation of 
 a constitution. Many others lacked interest in the whole affair. 
 As a result, of the more than 70 delegates appointed, only 56 
 ever showed up. Rhode Island refused even to send delegates. 
 The key figures of the Philadelphia Convention were 
 nonetheless undaunted when the delegates finally met in May 
 1787 in Independence Hall. By the end of the convention, the 
 others had been able to convince enough people of the need 
 for a stronger central government that the Convention was a 
 reality.

I have always found it interesting that most of the delegates— 
 33 of them, in fact—had studied law. John Blair of 
 Virginia, John Dickinson of Delaware, Charles Cotesworth 
 Pinckney of South Carolina, Robert Morris of North 
 Carolina—had their training at Middle Temple in London; and 
 another, William Houstoun of Georgia, had been schooled at 
 the Inns of Court in Rome and Greece as well as France and England. They had 
 read Locke and Montesquieu. And many had played prominent 
 roles in the revolution.

Getting the delegates to agree on a new constitution, 
 however, required as much if not more persuasion than getting 
 the states and the Continental Congress to agree to a meeting. 
 The chief obstacle was convincing the delegates that the states 
 needed to surrender some authority and sovereignty to a new, 
 unknown, and as yet undefined national government. The 
 delegates then had to find a method of electing the national 
 legislature that would be acceptable to both the small and the 
 large states. The lawyers at the Convention, using their 
 analytical and persuasive skills to good advantage, played 
 leading roles in resolving these great issues. They included Edmund Randolph, Governor of Virginia and 
 later the first Attorney General of the United States, John Rutledge 
 and Oliver Ellsworth, who later served as Chief Justices of the 
 United States, and William Paterson and James Wilson, 
 who later became associate justices.

Lawyers also led the fight for ratification. We know that The 
 Federalist Papers, written by three lawyers, played a vital role in 
 convincing the American people of the strengths of the proposed Constitution. Hamilton, Madison and John Jay—later 
 known as the Federalists—were the editors of the Federalist 
 as the best political essays ever written about our system.

Back in Philadelphia, the Federalist Papers—though written then in a 55-year-old law, played an 
 important role in Virginia's history of ratification by carefully 
 countering Patrick Henry's powerful oratory with cool, logical 
 reasoning.

Today, as the opening of the Bicentennial approaches, we 
 face a challenge not wholly unlike that faced by the Founders 
 instilling in their minds and minds of all Americans a deeper 
 appreciation for and a keener understanding of our unique 
 constitutional system and the principles on which it is based. 
 The events of the past 40 years have brought home to us very 
 forcefully the fragility of freedom. The threat of a strong 
 central government cannot be left to proper or properly 
 practice what we do not understand. We can best 
 honor the Constitution by giving ourselves and those around us 
 a better and more abiding knowledge of its origins and 
 meaning. Plans and programs are already being developed throughout 
 the country. There will be seminars, lectures, debates, 
 speeches, and essay contests. Television shows will dramatize 
 the historical events leading up to the Philadelphia Convention 
 and ratification of the Constitution. Hundreds of thousands of 
 words will be written and spoken as we hold a great American 
 birthday party for our Constitution.

The Judicial Conference of the United States has formed a 
 special committee on the Bicentennial, chaired by Judge 
 Howard Markey, to promote and coordinate the celebration 
 within the Judiciary. This committee's activities and mission 
 are ably discussed in Judge Markey's article. Similar commit-
 tees—with membership open to lawyers and others in the 
 community— are being formed in each of the Federal Circuits. 
 Judge Arlin Adams, moreover, chairs a judicial Speakers' 
 Bureau, and some 500 judges have already signed up.

International Symposium

The Smithsonian Institution, in cooperation with the Amer-
 ican Bar Association and the University of Virginia, will 
 convene a symposium on "Constitutional Roots, Rights and 
 Responsibilities" which will probe the Constitution's origins, 
 examine its fundamental principles, and its applicability to 
 the present day, and generate fresh perspectives on the 
 Constitution's role in governance in the coming years. Among 
 the symposium speakers will be Supreme Court Justice 
 William J. Brennan, Jr., and retired Chief Justice Warren Burger.

The symposium will begin in Charlottesville at the Univer-
 sity of Virginia, May 18-19, 1987, and move to Washington, D.C. at 
 the Decennial Auditorium on Constitution Avenue, May 

California Program

The U.S. District Court for the Northern District of 
 California Historical Society, in conjunction with the United 
 States District Court for the Northern District of California, 
 has a major program of symposia and public exhibits to 
 celebrate the Constitutional Bicentennial. The first event was 
 the opening of an exhibit entitled "The Fields and the Law" 
 May 12 at the U.S. Courthouse in San Francisco.

The exhibit traces the illustrious and often controversial 
careers of the Field brothers, Supreme Court Justice Stephen J. 
 Field, and David Dudley Field, author of the Field Codes, and 
 their nephew, Supreme Court Justice David Brewer. Such 
 diverse incidents in Stephen Field's life as his disbarment 
 - continued on page ten

Bicentennial Programs of Interest to Society Members

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The Judicial Conference Committee on the Bicentennial of the Constitution

by Chief Judge Howard T. Markey, Chairman

At the direction of the Judicial Conference of the United States in October 1985, Chief Justice Burger appointed a Committee on the Bicentennial of the Constitution. Instigating widespread participation, he appointed a district or circuit court judge from each of the thirteen circuits, a judge from the highest court in two states, and a chairman. Then Associate Justice Rehnquist and Justice Powell served for a time on the committee. Because of the potential for overlapping activities with the National Commission on the Bicentennial of the Constitution, of which he is chairman, Chief Justice Burger joined the Conference Committee.

At its organizational meeting on December 18, 1985, the Committee reached conclusions on: (1) its mission; (2) its modus operandi; and (3) funding.

The Committee adopted, as its guidance over its three-year life, this mission statement:

The Committee shall:
(a) promote, encourage, and coordinate activities within the Judicial Branch designed to commemorate the Bicentennial of the Constitution, including its drafting, ratification, history, and importance in the lives of the American people.
(b) plan and develop such activities, in pursuit of the goals of ceremony, celebration, scholarship, and education.
(c) serve as a clearing house for collection and dissemination of information about bicentennial events and plans of individual units of the Judicial Branch.

Recognizing the limitations imposed by many factors, the Committee adopted this description of its modus operandi:

The Committee shall:
(a) accomplish its goals primarily by encouraging local Judicial Branch entities to create and carry out projects in their local areas, using volunteers, and locally generated funds. Locally conceived, planned, staffed, funded, and conducted activities are not only more likely to succeed, but are essential to accomplishment of the nationwide celebration of the Constitution's Bicentennial.
(b) committee decisions shall be reached by majority vote. Each Circuit shall have one vote. The Chairman votes only in case of a tie.

Thus the Committee serves as a catalyst and clearing house for information and ideas.

In considering its operation, the Committee noted the need to concentrate on the Judiciary's celebration of the Bicentennial and on its unique role in defending and preserving the Constitution. Literally thousands of organizations will be encouraged by the National Commission to participate in the general celebration and educational projects devoted to many different aspects of the Constitution. The Judiciary should be best suited, however, to contribute to an understanding of what Article III of the Constitution has meant to the preservation of freedom in our country for two hundred years.

At the same time, the Committee recognized that it "could not do it all," and that it should make that fact clear to all judges. Indeed, the Committee saw that even if it could do it all, it should not, hence, its reference to "Locally conceived, planned, staffed, funded, and conducted activities." To that end, it was determined that the chairman and each circuit representing member would request the formation of local committees by each district and circuit court in the federal system.

Viewing local committees and their activities as the key to success, the Committee felt that the membership of such local committees should be left solely to the courts (or Circuit Councils) appointing them. The Committee saw no reason, for example, to suggest that local committees be restricted to judges. Indeed, membership by lawyers, professors, business and professional persons, clergy, politicians, etc., was seen as adding special dimension to the Judiciary's effort to both explain and celebrate the Constitution. That special dimension takes on particular interest in light of the perceived tendency of many citizens to consider the Constitution as the special province of the government or of the Congress or of the courts, as contrasted with its daily role in the lives of the people.

For the same reasons, the Committee adopted a strong, substantial benefit, in cooperation between local committees of the Judiciary and committees formed by state courts, by states, cities, and counties, by local bar associations, by local business entities, etc.

Though the Committee has not, at the time of its organizational meeting, received its appropriation, it recognized that whatever it received would be dissipated long before the Committee had lived out its term if it were to become a source of funding for local projects. Questions of whether the Committee should consider requests for grants and the criteria evaluating such requests were set aside for future consideration.

As a funding matter, the Committee noted that the Judiciary lacked authority to receive gifts of cash and that the Director of the Administrative Office had authority to receive non-cash gifts on behalf of the courts, but that each local committee would have to investigate the propriety of methods they might employ in arranging for monetary support of their local projects.

Concerning committee expenditures, the Committee noted that it has no staff, and that travel costs dictated that committee meetings would be infrequent. The Committee determined that it would accomplish its work primarily through correspondence and telephone communication. Time precluded discussion of a long list of projects that might be suggested to local committees, but copies were supplied to members for possible use within the Circuits. The list included, in part, exhibits on the Constitution in every federal courthouse, "open house" days at court, exchanges of visits between schools and courts, and distribution by courts of pamphlets explaining various elements in the court system.

The ensuing months of the Committee's life were devoted to two fundamentals, obtaining its appropriation and encouraging the formation of local committees. The Chairman appeared before and was well received by the Congress, which initially appropriated the Committee's request in full. Thereafter, in view of now famous budgetary constraints, Congress reduced the appropriation by one-third. Formation of local committees has, as might be expected, proceeded more slowly in some circuits and more quickly in others.
Bicentennial Programs (Continued from page five)
during the California gold rush, his later role in deciding
important constitutional issues during the Gilded Age, and his
campaign for a presidential nomination are covered. For David
Dudley Field, the exhibit illustrates episodes in his career
ranging from his campaigns for codification of the law to his
important constitutional cases before the U.S. Supreme Court,
providing a fascinating look at a remarkable family that
significantly shaped American law. Professor Charles W
McCurdy of the University of Virginia, the leading scholar on
Justice Field and a member of the Supreme Court Historical
Society, gave the address at the opening of the exhibit in San
Francisco.

For those unable to visit the exhibit, a book by the same title
published by the Northern District of California Historical
Society and the Supreme Court Historical Society's executive
offices for $3.00, plus $1.00 postage and handling.

The Northern District Court Historical Society is also
sponsoring four symposia on the U.S. Constitution. Sym-
posium I entitled "The Constitution and the Separation of
Powers" was held March 12, 1987 and featured U.S. Court of
Appeals Judges Abner J. Mikva (District of Columbia), and
Judge Joseph T. Sneed (Ninth Circuit) and Louis Fisher,
Library of Congress Specialist in American National Govern-
ment, as speakers.

Symposia II, to be held on May 26th, is entitled, "The
Constitution and Judicial Review." Speakers include Judge
Kenneth W. Starr of the U.S. Court of Appeals for the District
of Columbia Circuit who will also address the Supreme Court
Historical Society membership on May 28th as this year's
Annual Lecturer, Professor of History Jack N. Rakove of
Stanford University and Dean Jesse H. Choper of Boalt Hall
School of Law.

Symposium III, scheduled for July 16th, is entitled "The
Constitution and Foreign Relations." Speakers will include the
State Department's Abraham D. Sofaer, Professor Louis
Henkin of Columbia University and Professor of Law Michael
J. Glennon of the University of California, Davis.

The last symposium in the series will be held October 26th
and is entitled, "The Constitution and Federalism." Speakers
for the symposium include Justice Hans A. Linde of the
Supreme Court of Oregon, U.S. Court of Appeals Judge
Anthony Kennedy (Ninth Circuit) and Professor of Business
Administration and Public Policy Susan B. Rote of the
University of California at Berkeley.

SPECIAL GIFT IDEAS

New Gift Items
Two and three-quarter inch square lead crystal box, with
engraved seal of the Supreme Court of the United States on
the top. 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 glass box with the Supreme Court's seal
engraved on the lid. The mirrored bottom reflects the seal. The
box measures 4" x 4" x 2½" and has brass trim. $31.50

Publications
Pocket sized Constitution. Contains the text of the Constitution
and all amendments through 1986. An easy to read and carry
copy of this important document. $1.00

The Documentary History of the Supreme Court of the United
States, 1789-1860. 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. The volume contains
primary source materials including manuscripts, correspond-
ence, 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 Shuyerson. This 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 people, places and events
associated with the history of the Supreme Court. Its 204 pages
contain a bibliography, a chart of justices, and 177 illustrations,
including 85 in full color. $48.00

Gift Order Form

To order, simply fill out the order form below and send it, along with your check, money order, or credit card name, number and
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users may also order by phone by calling (202) 543-0400, 10:00 A.M. to 4:00 P.M. (EST), Monday through Friday. Prices include
shipping and handling. Please allow four to six weeks for delivery.

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The Court's new photographs may now be ordered through the Society's executive offices. An 8 x 10 formal black and white group photograph
is $10.00. Color 11 x 14 group photos are available in either a formal or an informal pose for $21.00 unmounted or $25.00 on an 11 x 13 mat
suitable for framing. Photographs of the individual Justices are available in black and white for $10.00 and color for $20.00.
New Members (continued from page five)

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Philip W. Tone, Chicago
Michael Vallone, Des Plaines

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