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.

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. —continued on page three
A Letter From The President

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 those 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 Dwinnell, 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 USPShas 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 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.

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 final draft of these criteria 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 educational aids 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.

Membership Committee

The Membership Committee, chaired by John Shepherd, will hold an organizational meeting in Washington on September 30, 1988. The Committee will be filling vacancies among the Society's State Membership Chairs, 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 Price 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 is of course in the Great Hall.

Mr. Stanley then called upon Mr. Hancock and Mr. Tanner for recognition, thanking them for their contributions. Mr. Hancock informed the audience that the bust 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 grandchildren, Lindsay 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 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.

The bust was presented 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 Company.

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 six 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) 778-0013 or David Pride at the Society's headquarters at (202) 543-0400 for details.

THE SUPREME COURT

HISTORICAL SOCIETY

Quarterly

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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 landed 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 escaping in the heights of Georgetown, while the British troops marched unopposed into the Capital.

Dr. William Beanes of Upper Marlboro had been captured because he had caused the arrest of three of his slaves. The cartel ship sailed with the Doctor, Dr. Beanes and other men of advanced age of 65, and his good standing in the community and one of the Commissary's officers, John Skinner. The British troops while preparations for the attack were made. Key and Skinner sailed on a cartel ship that was used for 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. 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 counsel who practiced law and was ready to brave odium or even personal danger in their behalf." Because of the political vagaries Key had cases in which he fought to defend the property rights of slave owners. Key, as many other men of conscience of that era, found himself enmeshed in a complex 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 settle in Africa. His philosophy was expressed 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 president 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 slave trading. 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 sailed to the United States where it was intercepted by a United States 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 slave trade was legal under the law of nations. 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. Further defense of 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 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 privation that 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 armed 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.

The battle scene inspired Key to write the National Anthem. The ship 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. He 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 present 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.
Key (continued from page five)

centered on the premise that the Supreme Court was obligated to
carry out the law of a State's 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, which was tantamount to a solemn pledge to all nations interested in the suppression of this
brutal
traffic, and to Africa herself, that if the objects of it should
seek 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
effective than the permission. The claimants must, conse-
quently, show more 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 sovereignty right
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 Attorney District Attorney for the United
States, to be disposed according to law. 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
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.

Unfortunately, the alleged pilot "proof is not satisfactory beyond
ninety-three..." The decree of the court indicates that the
ninety-three "shall be acordoing 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 pro-
nouncing the said decree..." This wording conjures up a
pitiable picture of the slaves who had waited five years in custody
unnecessarily, of any Portuguese claim.

Of Key's most famous clients was the legendary Sam Houston who was
tried by the House of Representatives for assaulting Representative William
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unnecessarily, of any Portuguese claim.
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 inadvertently, 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 a crippled right arm and other physical weaknesses as illustration of his sacrifice."

Unfortunately, the treaty of the House was made promptly and without hesitation. The state of the New Nation led to the creation of the United States government. The question of the treaty was raised under federal rights because the situation was beyond the control of the United States government. The United States government was not aware of the treaty at the time of its creation. The treaty was used as a source of information and not as an argument to support the case against Houston.

The military authorities refused to surrender the accused soldiers and the civil authorities demanded that the state militia intervene. The question of the treaty was raised under federal rights because the situation was beyond the control of the United States government. The United States government was not aware of the treaty at the time of its creation. The treaty was used as a source of information and not as an argument to support the case 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 if the House thought Houston had participated in attempted fraud, they should be merciful to him. His argument was that the House should be more merciful to Houston because he had served his country taking "no other spoils than the scars of a crippled right arm and other physical weaknesses as illustration of his sacrifice." He concluded by begging that Houston's honorable name be cleared as Houston cherished it "as his only earthly treasure."
**Paperweights**

Our newest desk item is a distinctive 3 x 3 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 enameled image of the Supreme Court Building. $15.50

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**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 capital. The cards measure 5 x 7 inches. The rich color in the photographs is enhanced by the accompanying blue envelopes. Individual cards 50 cents each; 100 or more $0.39 each

Embroidered Note Card This white on white notecard features a finely embroidered image of the Supreme Court building. The card measures 4 1/2 x 6 inches and is accompanied by a white envelope. 90 cents 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 catch's the front pediment with its legend "Equal Justice Under Law". The card and the matching creamy envelope have a deckled edge. $1.00 each or 10 cards for $8.50

**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 history 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 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

**Glow in the Dark Crystal Glass Set** The glasses are round, but the lower third is shaped in a columnar form, giving the impression that the glass is hollowed out. The glasses are round, but the lower third is shaped in a columnar form, giving the impression that the glass is hollowed out. Each glass is acid-etched with fine detail, available in gold or silver plate. Tie Bars $18.00; Tie Tacks $11.00; Money Clips $21.00; Cufflinks $23.00

**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 26 inches. This attractive piece is appropriate for home or office decor. $200.00.

Handcolored Watercolor of the Supreme Court building by Andy Dedula. These beautiful paintings are double matted with beveled edge mats and are ready for framing. The picture is available in two sizes: the small picture is 8 1/2 by 7 inches, and the large picture measures 16 inches by 20 inches. Both pictures are excellent values and are priced at $6.90 and $11.00 respectively.

**Posters**

Posters 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.

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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.

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Quantity

Item

Desk Folder

Brass Gavel

Wheat Gavel Plaque

Ceramic Inkwell

Peffer Inkwell with Quill Pen

Pewter Plates (large / small)

Porcelain Handled Letter Opener

Double Pen Set

Oblong Laser Etched Box (one compartment / two)

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Memo Caddy

Bookends

Single Pen Set

Wheat Single Pen Set

Wheat Pencil Caddy

Wooden Business Card Holder

Black Marble Paperweight

Lead Crystal Paperweight

Lead Crystal Box

Beveled Edge Glass Box

Glass Set

Lead Crystal Glass Set (double old fash. / highball)

Glass Suncatcher

Gavel Pencils

Mug

Tie Tacks (specify gold or silver plate)

Tie Bar (gold / silver)

Money Clip (gold / silver)

Gavel Pencils

Cufflinks (gold / silver)

To-K Ladens' Charm

Documentary History

Illustrated History

Miracle at Philadelphia

Anderson Lithograph

Dedula Watercolor (small / large)

Supreme Court Poster

Doors of Washington Poster

Christmas Cards (Capitol / Supreme Court)

Embossed Note Card

Engraved Card

Total

Price

$13.00

$12.00

$45.00

$11.00

$20.00

$41.00 / $17.50

$6.00

$39.00

$25.00

$9.00

$32.00

$30.00

$24.00

$45.00

$51.00

$3.50

$9.00

$31.50

$12.00

$30.00

$4.50

$.65 each, $6.00 doz.

$5.50, two for $10.50

$18.00

$21.00

$23.00

$21.00

$75.00

$38.00

$8.95

$20.00

$65.00 / $11.00

$10.00

$8.50

$5.00

$9.00 each

$11.00, 10 for $8.50

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

---continued on page ten
Key (continued from page nine)

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

In 1834 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 claims by individuals who had contracted with the previous Postmaster to deliver mail, 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 $160,000, 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.

Key appealed the case 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. The Court's ruling in Kendall v. United States was confirmed as 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 Attorney General Butler and District Attorney Key, represented Kendall, and brought a writ of error to the Supreme Court again. The majority opinion favored the position taken by then District Attorney Key.

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. Instead, the actions of the Cabinet were under the direction of the President. 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 overruled 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 Georgetown, where he rests today. 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.

Chief Justice Roger Brooke Taney was one of three Justices who dissented in the case. The majority opinion favored the position taken by then District Attorney Key.

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 Constitutional 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, 1876." 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 record that after 1876, 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 to lend the United States.

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There was some doubt whether George Washington, naturalist at the celebrated library at Mount Vernon, 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.
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 echoes the determination of the Congress to secure 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 them. In this, "His Majesty's subjects, being as necessity enforced to employ a comparatively small force, it was highly necessary that troops in the service of the United States be immediately augmented, not only for the protection and support of the national 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 bounds. 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 define the increasing complications 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 chief, were conducting the Southern Indian trade and frontier settlements from Georgia and the Carolinas back across the Appalachians. The Spanish action to close the Mississippi River to foreign navigation in 1786, 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 eastern homes. 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 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 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 payment in other Confederation attempts to secure financial stability.

Congress had asked the states to ratify an amendment to the Articles of Confederation granting the national government the power to levy a five per cent tax on all imported goods. To make the proposal more attractive, Congress stipulated that all monies raised would be applied solely to pay the debts. James Madison, who signed in a letter to Edmund Randolph, the state of Rhode Island refused to cooperate. His letter, partially written in cipher, reads "The obscurity of Rhode Island in rejecting the imports is a subject of general and pointed criticism 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 an attempt to end self-serving behavior. Two appeals to the states in an attempt to end self-serving behavior. Two appeals

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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, thereby creating a 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
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 1783, there was talk in Virginia of a "meeting of the delegations 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 regarding 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 "pecoan [- sic] mats and the seed of the sugar tree," and inquires if "there are other things here which would be acceptable" to send to Jefferson. Madison writes that "I lately had an habits of new ideas which I was 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, preferring to address National problems. Rather, he preferred to press for change within the established political system from his seat in the Confederation Congress. Regardless of his position, the Annapolis Convention was not successful in solving national problems, as not enough of the States sent representatives to the Convention.

The one positive result of the Convention was a Resolution for its endorsement, communicating with influential people in the present Confederation, as a mean to remedy which several of the states most affected by the proposed regulation of commerce. The Resolution recommended to legislators that they endeavor "to the "sole and express 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 states within five weeks. Madison writes that "I lately had an habits of new ideas which I was 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.

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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).

Alabama
Kathy S. McKeen, Birmingham

Arizona
Frank Barela III, Phoenix

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Michael Glennon, Davis
Joerg W. Knipprath, Los Angeles
Pierce O'Donnell, Los Angeles
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Connecticut
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S. Howard Goldman ++, Westport

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Idaho
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Minnesota
Tracey Bakker, Renville
Charles D. Nelson *, St. Paul

Mississippi
Luther T. Mumford, Jackson

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Raymond R. Fournie, St. Louis
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Texas
Michael Sean Quinn, Dallas

Virginia
Michael Klarman, Charlottesville

Washington
Robert Jacobs, Ellensburg