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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC CITIZEN
2000 P Street, N.W.
Washington D.C. 20036
(202) 293-9142

Plaintiff,

v.

COMMISSION ON THE BICENTENNIAL
OF THE UNITED STATES CONSTITUTION,
734 Jackson Place, N.W.
Washington D.C. 20503
(202) USA-1787

Defendant.

Civil Action No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This action seeks declaratory and injunctive relief under the Federal Advisory Committee Act ("FACA"), 5 U.S.C. App. I, from defendant's refusal to provide reasonable advance notice of its meetings and to open its meetings to the public, and under both FACA and the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, from defendant's failure to provide plaintiff access to certain of its records that plaintiff requested.

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

PARTIES

3. Plaintiff Public Citizen is a non-profit public interest organization which has been working since 1971 to increase government accountability. Plaintiff is interested in following the activities of defendant by attending its meetings and

reviewing its records.

4. Defendant Commission on the Bicentennial of the United States Constitution (the "Commission") was established by Public Law 98-101, 97 Stat. 719 (Sept. 29, 1983), for the purpose of advising the President on the commemoration of the bicentennial of the United States Constitution and on the coordination of bicentennial and related activities. Three of its members are designated in Public Law 98-101, twelve are appointed by the President from among recommendations made by the Speaker of the House of Representatives, the President pro tempore of the Senate, and the Chief Justice of the United States, and the remaining eight are selected solely by the President.

FACTS

5. On July 29-30, 1985, the Commission held its first meeting. The Commission failed to provide reasonable advance notice of this meeting by either publishing a notice in the Federal Register or providing some other public notice designed to ensure that all interested persons would be notified of the meeting. The meeting was not open to the public, and interested persons were not permitted to attend the meeting.

6. On August 22-23, 1985, the Commission held its second meeting. The Commission again failed to provide reasonable advance notice of this meeting and did not open it to the public.

7. The Commission plans to hold its next meeting on November 24-25, 1985, but has not provided any public notice of this

meeting and does not intend to open this meeting to the public.

8. On September 23, 1985, plaintiff hand delivered a letter to defendant in which it requested that the Commission immediately begin providing reasonable advance notice of its meetings, and that all future meetings of the Commission be open to the public, unless closing is specifically authorized pursuant to section 10(d) of FACA. By letter dated October 10, 1985, defendant denied plaintiff's request, asserting that it is not a federal advisory committee and hence is not required to comply with FACA.

9. In its September 23 letter, plaintiff also requested that it be provided access under the FOIA to all documents furnished to Commission members or otherwise discussed in connection with the Commission's two previously closed meetings. In its October 10, 1985 response, defendant failed to comply with this request as well.

COUNT ONE

10. The Commission is a federal advisory committee as that term is defined in section 3(2) of FACA, because it was established by statute in the interest of obtaining advice and/or recommendations for the President and/or one or more federal agencies and is being utilized for that purpose.

11. Section 10(a) of FACA provides that advisory committees must furnish the public with reasonable notice of their meetings and must open those meetings to the public, except in the limited circumstances described in section 10(d) of FACA, none of

which is applicable to the Commission's meetings.

12. Plaintiff seeks, and continues to seek, to attend and observe these meetings, or to obtain transcripts of them, but has been prevented from doing so because of defendant's refusal to comply with the provisions of FACA. Unless the Court provides plaintiff the relief that it seeks, the Commission will continue to violate FACA by refusing to provide public notice of its meetings and refusing to open them to the public.

COUNT TWO

13. Section 10(b) of FACA, together with the FOIA, require advisory committees, such as the Commission, to make their records, transcripts, working papers, and other documents available for public inspection, with certain exceptions, none of which is applicable to these records.

14. More than ten working days have passed since defendant received plaintiff's request for the records described in paragraph 9, supra. In its October 10 response, defendant failed to provide plaintiff access to the requested documents within the time allowed by 5 U.S.C. § 552(a)(6), and hence plaintiff has exhausted its administrative remedies.

15. Unless the Court provides plaintiff the relief it seeks, the Commission will continue to deny plaintiff access to the requested records.

WHEREFORE, plaintiff prays that this Court enter an order:

(a) declaring that the Commission is a federal advisory committee within the meaning of section 3(2) of the Federal

Advisory Committee Act;

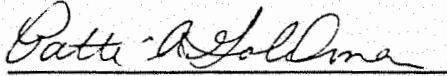
(b) preliminarily and permanently enjoining defendant from convening any further meetings without fully complying with the provisions of the Federal Advisory Committee Act, and specifically requiring defendant to: (1) open its meetings to the public except in the limited circumstances provided for in section 10(d) of the Federal Advisory Committee Act; and (2) provide reasonable advance public notice of all future meetings;

(c) directing defendant to grant plaintiff access to the records requested by it;

(d) awarding plaintiff its costs and disbursements, including reasonable attorneys' fees; and

(e) granting plaintiff such other and further relief as may be just and proper.


Respectfully submitted,



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Attorneys for Plaintiff

October 10, 1985

* Not admitted in the District of Columbia

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA


PUBLIC CITIZEN,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 85-3233
)	(Judge Oberdorfer)
COMMISSION ON THE BICENTENNIAL)	
OF THE UNITED STATES CONSTITUTION,)	
)	
Defendant.)	

MOTION FOR A PRELIMINARY INJUNCTION

Pursuant to Rule 65(a) of the Federal Rules of Civil Procedure, plaintiff hereby moves the Court for an order preliminarily enjoining defendant Commission on the Bicentennial of the United States Constitution from closing future meetings, including the meeting scheduled for November 24-25, 1985, in violation of the Federal Advisory Committee Act, 5 U.S.C. App. I.

In support of this motion, plaintiff is submitting a memorandum, an affidavit, several exhibits, and a proposed order.

Respectfully submitted,


Patti A. Goldman
Alan B. Morrison
David C. Vladeck

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Attorneys for Plaintiff

Dated: October 23, 1985

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC CITIZEN,)
)
 Plaintiff,)
)
 v.) Civil Action No. 85-3233
) (Judge Oberdorfer)
 COMMISSION ON THE BICENTENNIAL)
 OF THE UNITED STATES CONSTITUTION,)
)
 Defendant.)

MEMORANDUM IN SUPPORT OF PLAINTIFF'S
MOTION FOR A PRELIMINARY INJUNCTION

In this action, plaintiff challenges defendant's refusal to provide reasonable advance notice of its meetings and to open its meetings to the public, as required by the Federal Advisory Committee Act, 5 U.S.C. App. I ("FACA"). The instant motion requests that the Court preliminarily enjoin defendant from closing future meetings in violation of FACA, specifically the meeting that it plans to hold on November 24-25, 1985. The underlying facts are not in dispute and the only question raised in this case is a legal one: whether FACA applies to defendant's meetings. Therefore, plaintiff asks this Court to exercise its discretion pursuant to Rule 65(a)(2) of the Federal Rules of Civil Procedure and to consolidate consideration of the merits of a permanent injunction with this motion for a preliminary injunction on the FACA issue. The remaining questions in this case, which involve defendant's failure to provide plaintiff access to certain of its records that plaintiff has requested, as required by both FACA and the Freedom of Information Act, 5

U.S.C. §552 ("FOIA"), are not at issue in this motion.

BACKGROUND

The defendant Commission on the Bicentennial of the United States Constitution (the "Commission") was established by Public Law No. 98-101, 97 Stat. 719 (Sept. 29, 1983) (the "Act"), for the purpose of advising the President on the commemoration of the bicentennial of the United States Constitution and on the coordination of bicentennial and related activities. One of the Commission's principal statutory charges is to formulate recommendations for the commemoration of the bicentennial of the Constitution:

Within two years after the date of enactment of this Act, the Commission shall submit to the President and each House of Congress and the Judicial Conference of the United States a comprehensive report incorporating specific recommendations of the Commission for commemoration and coordination of the bicentennial and related activities. Such report shall include recommendations for publications, scholarly projects, conferences, programs, films, libraries, exhibits, ceremonies, and other projects, competitions and awards, and a calendar of major activities and events planned to commemorate specific historical dates. Each year after such comprehensive report, the Commission shall submit an annual report to the President, each House of the Congress, and the Judicial Conference until such Commission terminates.

Id. §6(e); see also S. Rep. No. 98-68, 98th Cong., 1st Sess. 43 (1983) (Commission is to prepare "an overall comprehensive master proposal for commemoration of the bicentennial" including specific recommendations in the areas detailed in the Act). In making its recommendations, the Act requires the Commission to emphasize public education about the Constitution, id. §6(a)(1) & (b)(4), (7) & (10), and to consider the importance of the

Constitution to various ethnic and racial groups, legal and philosophical views, and the states, id. §6(b)(2), (4) & (6).

The Act dictates the organizational structure of the Commission. It specifically designates three of the Commission's twenty-three members (or their designees) based upon the positions they hold; namely, 1) the Chief Justice of the United States; 2) the President pro tempore of the Senate; and 3) the Speaker of the House of Representatives. It also provides that the President shall appoint the remaining members of the Commission, twelve of whom are to be appointed from among recommendations made by the three statutorily designated members. Id. § 4(a).

In signing the Act into law, President Reagan observed that the Commission's functions would be primarily advisory in nature:

I welcome the participation of the Chief Justice, the President pro tempore of the Senate, and the Speaker of the House of Representatives in the activities of the Commission. However, because of the constitutional impediments contained in the doctrine of separation of powers, I understand that they will be able to participate only in ceremonial or advisory functions of the Commission, and not in matters involving the administration of the act. Also, in view of the incompatibility clause of the Constitution, any Member of Congress appointed by me pursuant to section 4(a)(1) of this act may serve only in a ceremonial or advisory capacity.

Presidential Statement Upon Signing S.118 Into Law (Sept. 29, 1983), in 19 Weekly Compilation of Presidential Documents: Administration of Ronald Reagan 1362 (1983).

Subsequently, the President appointed the remaining 20

members of the Commission and, pursuant to §4(d) of the Act, designated Chief Justice Warren E. Burger as the Commission's Chairman. Affidavit of Alan B. Morrison ¶ 3 (Oct. 23, 1985) ("Morrison Affidavit"). The Commission now includes two members of the House of Representatives, three United States Senators, and three members of the federal judiciary. Id. ¶ 3 and Exhibit B thereto.

On July 29-30, 1985, the Commission held its first meeting, which it closed to the public. Morrison Affidavit ¶ 4. Nor did the Commission provide reasonable advance notice of this meeting by either publishing a notice in the Federal Register or providing some other public notice designed to ensure that all interested persons would be advised of the meeting. Id. The Commission held its second meeting on August 22-23, 1985, also in closed session, and it again failed to provide reasonable advance notice of this meeting to the public. Id. ¶ 5. On September 17, 1985, the Commission conducted a public hearing, to which it invited nineteen private organizations to present their plans for commemorating the bicentennial of the Constitution. Id. ¶ 6. Attendance by Commission members was sparse, and the Commission transacted no business at this meeting. Id.

Plaintiff, a public interest organization, is interested in following the activities of defendant by attending its meetings and reviewing its records. Id. ¶ 2. After defendant closed its first two meetings, plaintiff hand-delivered a letter dated September 23, 1985, to the staff director of the Commission,

requesting that the Commission immediately begin providing reasonable advance notice of its meetings, and that all future meetings of the Commission be open to the public, unless closing is specifically authorized pursuant to section 10(d) of FACA. Morrison Affidavit ¶ 7 and Exhibit F thereto. By letter dated October 10, 1985, the Commission's Director denied plaintiff's request, asserting that, because the Commission is not a federal advisory committee, it is not required to comply with FACA. Morrison Affidavit ¶ 8 and Exhibit G thereto.

The Commission plans to hold its next meeting on November 24-25, 1985. Morrison Affidavit ¶ 9. The Commission has neither published advance notice of this meeting in the Federal Register nor provided some other public notice designed to ensure that all interested persons will be notified of the meeting. Id. Moreover, the Commission does not intend to open this meeting to the public. Id. As a result, this action was filed on October 10, 1985.

ARGUMENT

In determining whether a preliminary injunction is appropriate, the district court must weigh the following factors: 1) whether the moving party has made a strong showing that it is likely to prevail on the merits; 2) whether the moving party will be irreparably injured without preliminary injunctive relief; 3) whether a preliminary injunction will substantially harm other parties interested in the proceeding; and 4) the public interest. National Association of Farmworkers

Organizations v. Marshall, 628 F.2d 604, 613 (D.C.Cir. 1980);
Washington Metropolitan Area Transit Commission v. Holiday
Tours, Inc., 559 F.2d 841, 844 (D.C. Cir. 1977).

A. Plaintiff is Likely to Prevail on the Merits.

There is no dispute that the Commission closed its first two meetings to the public and did not provide reasonable advance public notice of these meetings. The sole issue in this case is whether the Commission is an advisory committee subject to FACA. If it is, then defendant is subject to the provisions of FACA which require that advisory committee meetings be open to the public (except in limited circumstances) and that reasonable advance notice be given of advisory committee meetings. 5 U.S.C. App. I, §10(a)(1) & (2); 41 C.F.R. §§ 101-6.1002(d), 101-6.1015(b) & 101-6.1023. A review of the requirements of FACA, of the Act establishing the Commission, and of the relevant case law demonstrates that the Commission is clearly an advisory committee covered by FACA.

Subject to certain exceptions not relevant here, FACA defines "advisory committee" as:

[A]ny committee, board, commission, council, conference, panel, task force, or other similar group. . .which is--

- (A) established by statute. . .or
- (B) established or utilized by the President, or
- (C) established or utilized by one or more agencies, in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government. . . .

5 U.S.C. App. I, §3(2) (emphasis added); accord 41 C.F.R.

§101-6.1003. The General Services Administration, which has

managerial and oversight responsibilities of advisory committees under FACA, see 5 U.S.C. App. I, §§7, 9(c)(1), & 10(a)(2)-(3), has issued regulations on federal advisory committee management. 41 C.F.R. §§101-6.1001 - .1035. These regulations elaborate further on the ways in which an advisory committee may be established, two of which are relevant here:

- (b) By law where the Congress specifically directs the President or an agency to establish it; [or]
- (c) By law where the Congress authorizes but does not direct the President or an agency to establish it.

41 C.F.R. §101-6.1005(b) & (c). In keeping with the legislative history of the Act, these regulatory provisions include within the definition of advisory committee those committees that are established by an act of Congress, but whose members are appointed by the President and whose purpose is to advise the President. H.R. Rep. No. 92-1017, 92d Cong., 2d Sess. 4-5 (1972), reprinted in Congressional Research Service, Federal Advisory Committee Act Source Book: Legislative History, Texts, and Other Documents 271, 274-75 (May 11, 1978).

The Commission is unquestionably an advisory committee within the plain meaning of the Act and regulations. On its face, the Commission was established to advise the President on the commemoration of the bicentennial of the United States Constitution and on the coordination of related activities. The Act explicitly states that the Commission is charged with rendering "specific recommendations" to the President and others "for commemoration and coordination of the bicentennial and related activities." Id. §6(e). Moreover, the Act specifically

delineates the subject matter to be covered in the Commission's recommendations, which encompasses the major statutory duties of the Commission. Id. Therefore, it is clear that both in the express language of section 6(e) and when taken as a whole, the Act created an advisory committee within the meaning of FACA.

The terms of the Act and the President's appointment of Commission members comports with the regulation's construction of the term "established" as well. 41 C.F.R. § 101-6.1005(b) & (c), quoted supra at 7. The Act designates three members of the Commission and provides that the President shall appoint the remaining twenty members of the Commission. Thus, by its terms, the Act enables the President to establish the Commission by exercising the appointment powers set forth in section 4 of the Act. Whether Congress has specifically directed or merely authorized the President to establish the Commission is inconsequential for the purpose of this lawsuit; in either event the Commission has been established by law within the meaning of relevant regulation.

The Commission is an advisory committee within the meaning of section 3(2)(B) and (C) of FACA as well. Since the report containing the Commission's recommendations is to be widely disseminated, and the Commission is required to consult other governmental agencies in preparing its recommendations, §6(c) & (e) of the Act, it is clear that a primary purpose of the Commission is to render advice to be utilized by one or more federal agencies, as well as the President. Clearly, the

Commission meets the "utilization" branch of FACA's definition of advisory committee as well.

This conclusion is buttressed by a review of the relevant case law. In Nader v. Baroody, 396 F. Supp. 1231 (D.D.C. 1975), vacated as moot, No. 75-1969 (D.C. Cir. 1977), this Court, using the legislative history and the administrative practice both before and immediately after passage of FACA as a guide, identified two core characteristics of advisory committees subject to the Act: an established organizational structure and a defined purpose of providing advice on a particular subject. Id. at 1233-35. Clearly, the Commission possesses these characteristics. It has a fixed membership with statutory procedures for appointment, tenure, and compensation, 5 U.S.C. App. I, §4(a) & (c); it has an established organizational structure, including a staff director, id. §5(a); a chairman, id. §4(d); provisions for a quorum, id. §4(e); and standards for compensation and reimbursement, id. §5(a)-(d); and standards for filling vacancies, id. §4(f), and it has, since its establishment, held periodic meetings. More importantly, the Commission has a statutorily defined purpose of providing advice and recommendations for the commemoration of the bicentennial of the United States Constitution. Id. §6(e).

In applying FACA, courts have generally adopted a broad construction of the term "advisory committee" to give meaning to the congressional purpose of ensuring public participation in the advisory committee process. See, e.g., National Nutritional

Foods Association v. Califano, 603 F.2d 327, 334-36 (2d Cir. 1979) (court of appeals applied broad reading of "advisory committee" as mandated by legislative history and congressional intent to allow public participation as a means to curb improper influence in advisory process); Center for Auto Safety v. Tiemann, 414 F. Supp. 215 (D.D.C. 1976), aff'd in part & remanded in part on other grounds sub nom. Center for Auto Safety v. Cox, 580 F.2d 689 (D.C. Cir. 1978) (applying expansive meaning of "established" and "utilized" in the definition of advisory committee, and narrow construction of statutory exceptions to FACA in keeping with legislative history); see also S. Rep. No. 92-1098, 92d Cong., 2d Sess. 8 (1972).

In Food Chemical News, Inc. v. Davis, 378 F. Supp. 1048 (D.D.C. 1974), this Court held that two informal meetings in which consumer and industry representatives gave advice on the drafting of proposed regulations to the Bureau of Alcohol, Tobacco and Firearms were advisory committee meetings which had to be open to the public and the press. The Court based its conclusion on: 1) the subject matter of the meetings, which consisted of advice rendered on a governmental function, namely, the drafting of regulations on public health matters; 2) the danger of undue influence by those represented at the meetings in the absence of public participation; and 3) the public interest in dissemination of the information generated in the meetings. Id. at 1051-52.

The same analysis shows that the Commission's meetings are

the sort that Congress had in mind in enacting the open meeting provisions of FACA. The subject matter of the Commission's meetings concerns its statutory mandate to prepare recommendations to the President on the commemoration of the bicentennial. Both the public and the press have exhibited extensive interest in the bicentennial. Morrison Affidavit ¶ 10. Moreover, the public importance of this subject is underscored by the statutory emphasis on public participation in bicentennial activities and the need for public education about the Constitution, 5 U.S.C. App. I, §6(a)(2), (b)(2), (4) & (10), & (c). In light of the strong public interest in the bicentennial and in Congress's express direction in FACA that the public should be permitted to observe meetings that will result in advice being given to the President, the Commission's meetings are plainly subject to the open meeting requirements of FACA.

Nor does the fact that the Commission may have certain administrative functions relating to the bicentennial mean that it is not an advisory committee subject to FACA. In Center for Auto Safety v. Cox, 580 F.2d 689, 694 (D.C. Cir. 1978), the Court held that the American Association of State Highway and Transportation Officials (AASHTO) was an advisory committee subject to FACA when it reviewed and discussed proposed federal regulations with the Federal Highway Administration, even though AASHTO had other nonadvisory functions when not dealing with federal agencies. In so holding, the Court recognized that advisory groups can have shifting identities for the purposes of FACA, at

times serving as advisory committees within FACA and at other times falling outside the ambit of FACA, which, in the case of AASHTO, meant lobbying, preparing publications, and other activities designed to foster a nationwide, integrated transportation system. Id. at 692-93.

It is beyond question here that the Commission was established in large part to give advice to the President on the commemoration of the bicentennial of the Constitution. Even if the Commission has nonadvisory duties related to the administration of the Act, such as encouraging participation in bicentennial activities, it still has a statutory duty to comply with FACA when it is performing its advisory functions. In keeping with the President's statement in signing the Act, Commission meetings involving the Chief Justice or members of Congress must be concerned solely with the advisory functions of the Commission and not with administering the Act generally. As such, the Commission is serving as an advisory committee at least in these meetings, which are then subject to the open meeting provisions of FACA.

Although in some instances, a group with the Commission's nonadvisory duties might be considered to be an "agency" as that term is defined in the Administrative Procedure Act, 5 U.S.C. §551(1), it is clear that this cannot be the case here because of the manner in which members are appointed and because of the membership on the Commission of judges and members of Congress. See U.S. CONST. art. I, §6, and art. II, §2, cl. 2. See

generally Buckley v. Valeo, 424 U.S. 1, 118-41 (1976). Likewise, the Commission cannot be an entirely private organization, such as a trade association, because of the federal government's pervasive role in establishing, governing, and supporting the Commission. See The Act §§4-5.

In sum, the Commission falls squarely within the definition of an "advisory committee" as that term has been defined in FACA, its implementing regulations, the legislative history of the Act, and the case law. As such, it is required to comply with the open meeting provisions of FACA, which it concededly has failed to do. Therefore, plaintiffs are likely, if not certain, to prevail on the merits in this case.

B. Plaintiff and the Public will Suffer Irreparable Harm Unless a Preliminary Injunction is Issued.

Plaintiff and other members of the public will be irreparably injured unless this Court preliminarily enjoins the Commission from closing its November 24-25 and subsequent meetings, as it currently plans to do. In enacting FACA, Congress stressed the importance of the open meeting provision of the law:

It establishes the standard of openness in advisory committee deliberations, and provides an opportunity for interested parties to present their views and be informed with respect to the subject matter taken up by such committees. . . . [T]he intention of this legislation is that the standard of openness and public inspection of advisory committee records is to be liberally construed.

S. Rep. No. 92-1098, 92d Cong., 2d Sess. 14 (1972). In opening

the hearings on the advisory committee legislation, Senator Metcalf highlighted the harm caused by closed advisory committee meetings:

What we are dealing with, in these hearings, goes to the bedrock of Government decision making. Information is an important commodity in this capital[sic]. Those who get information to policymakers, or get information for them, can benefit their cause, whatever it may be. Outsiders can be adversely and unknowingly affected. And decision-makers who get information from special interest groups who are not subject to rebuttal because opposing interests do not know about meetings--and could not get in the door if they did--may not make tempered judgments. We are looking at two fundamentals, disclosure and counsel, the rights of people to find out what is going on and, if they want, to do something about it.

Reprinted in id. at 4. See also Senator Metcalf's Statement upon introducing S. 3529, 92d Cong., 2d Sess., 118 Cong. Rec. S14,644, S14,647 (1972).

From the role and importance of the public access provisions of FACA, this Court has determined that members of the public will suffer irreparable injury if they are not allowed to attend advisory committee meetings in violation of section 10 of FACA.

Gates v. Schlesinger, 366 F. Supp. 797, 800-01 (D.D.C. 1973).

Accord Coalition for Legal Services v. Legal Services Corporation, No. 83-3005 (D.D.C. Oct. 12, 1983), aff'd, (D.C. Cir. Oct. 13, 1983) (Sunshine Act case) (Attached as Exhibit I). The Court of Appeals has likewise approved preliminary injunctive relief when necessary to prevent closed meetings in violation of FACA.

Center for Auto Safety v. Cox, 580 F.2d 689, 694 (D.C. Cir.

1978); Foundation on Economic Trends v. Heckler, No. 83-2714

(D.C. Cir. Feb. 6, 1984) (Attached as Exhibit B). Particularly in

light of the Act's emphasis on public participation in the commemoration of the bicentennial, plaintiff and the public will suffer irremediable hardship from being excluded from the Commission's future deliberations.^{1/}

C. Other Interested Parties will Suffer no Cognizable Injury If a Preliminary Injunction is Issued.

Congress declared in FACA that "the Congress and the public should be kept informed with respect to . . . activities . . . of advisory committees." §2, FACA; see also 41 C.F.R. § 101-6.1002(d). Despite this congressional pronouncement, defendant asserts that public attendance at the Commission's meetings will inhibit discussions and lead to reporting of members' statements out of context. Exhibit G to Morrison Affidavit. However, as this Court has stated:

Congress established openness to public scrutiny as the keystone of the Advisory Committee Act. Arguments that public participation and disclosure would inhibit debate and the frank expression of views were heard and rejected by Congress.

Gates v. Schlesinger, 366 F. Supp. 797, 799-80 (D.D.C. 1973).

In enacting FACA, Congress carefully weighed the inhibiting effect that public participation would have on advisory committees against the benefits of opening advisory committee meetings to the public and came out on the side of openness. Since

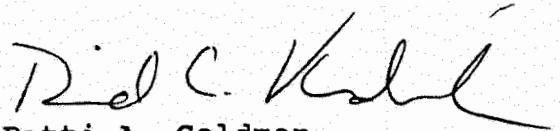
^{1/} Since the Commission asserts that it is not subject to FACA, it is not even keeping the kind of detailed minutes or verbatim transcripts required under the Government in the Sunshine Act that might arguably serve as a substitute for actual attendance at Commission meetings. See 5 U.S.C. § 552b(f). See also 5 U.S.C. App. I, § 10(c) & (d).

Congress has rejected the position now asserted by defendant, there is nothing left to balance against the irreparable harm plaintiff and the public will suffer if a preliminary injunction is not issued.

CONCLUSION

All of the factors to be weighed for injunctive relief decidedly favor issuance of a preliminary injunction. Plaintiff is almost certain to prevail on the merits, i.e., in proving that the Commission is an advisory committee which is violating FACA, and will suffer irreparable harm if defendant is allowed to continue closing its meetings in violation of FACA. The public interest will also be served by an order enjoining defendant from closing its next meeting. On the other hand, defendant will suffer no cognizable injury if an injunction is issued. For these reasons, plaintiff respectfully requests that this Court grant its motion for a preliminary injunction and that it make that injunction permanent under Rule 65(a)(2).

Respectfully submitted,



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Attorneys for Plaintiff

Dated: October 23, 1985

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC CITIZEN,)

Plaintiff,)

v.)

COMMISSION ON THE BICENTENNIAL)
OF THE UNITED STATES CONSTITUTION,)

Defendant.)

Civil Action No. 85-3233
(Judge Oberdorfer)

PLAINTIFF'S LIST OF EXHIBITS TO MEMORANDUM IN
SUPPORT OF MOTION FOR A PRELIMINARY INJUNCTION

- A. Coalition for Legal Services v. Legal
Services Corporation, No. 83-3005 (D.D.C.
Oct. 12, 1983), aff'd, (D.C. Cir. Oct. 13,
1983).
- B. Foundation on Economic Trends v. Heckler,
No. 83-2714 (D.C. Cir. Feb. 6, 1984).

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COALITION FOR LEGAL SERVICES,)
)
 et al.,)
)
 Plaintiffs,)
)
 v.)
)
 LEGAL SERVICES CORPORATION,)
)
 Defendant.)

Civil Action No. 83-3005

FILED

OCT 12 1983

TEMPORARY RESTRAINING ORDER

JAMES E. DAVEY, CLERK

This matter is before the Court on plaintiffs' motion for a temporary restraining order. Plaintiffs have supported their motion with a complaint, a memorandum of points and authorities, and several affidavits. Defendants have also filed several affidavits, and the Court has heard argument on plaintiffs' motion. Plaintiffs seek a temporary restraining order from the Court to enjoin defendant Legal Services Corporation from holding a meeting scheduled for tomorrow, October 13, 1983, at 8:00 a.m., in Salt Lake City, Utah. For the reasons indicated below, plaintiffs' motion is granted.

In order to grant preliminary relief, this Court must consider whether plaintiffs have presented a serious legal question. The Court also must balance the injury that plaintiffs will suffer in the absence of emergency relief against the harm that will befall defendant and other interested parties if such relief is granted. Washington Area Metropolitan Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977). Here, plaintiffs have presented a serious legal

and have made a strong showing of success on the merits question/as to whether defendant has violated the letter and spirit of the Sunshine Act, 5 U.S.C. § 552b and the Legal Services Corporation Act, 42 U.S.C. § 2296b et seq. Congress' intent in enacting the Sunshine Act was to afford persons who are interested in and affected by an agency's work an opportunity to attend the agency's meetings. In this case, the fact that a Federal Register notice regarding the Salt Lake City meeting will not be circulated until Wednesday, October 12, at the earliest, one day before the scheduled meeting, supports the conclusion that the public will not receive adequate notice of the meeting in violation of the letter and spirit of the Sunshine Act.

Moreover, a balancing of the equities favors issuance of a restraining order. Plaintiffs and others similarly situated will not have an opportunity to attend the meeting because of defendant's inadequate notice and, as a result, their Sunshine Act ^{rights} will be jeopardized. Particularly in light of the fact that the legal services program is designed to render legal services to poor persons, such persons should receive sufficient advance notice of the Corporation's meetings, particularly where, as here, the Corporation will consider matters of crucial importance to participants in the legal services programs.

While the Corporation claims that it will suffer some hardship as a result of the postponement of the meeting, this harm is clearly outweighed by the irreparable harm that plaintiffs and the general public will suffer if the

Corporation's critical meeting is held on Thursday, October 13, in the absence of reasonable advance notice. In sum, plaintiffs have satisfied the standards for the issuance of a temporary restraining order by raising a substantial legal issue regarding compliance with the Sunshine Act and by establishing that a balance of equities militates in favor of emergency relief.

Accordingly, it is, by the Court, at 6:15 o'clock, p.m. this 12th day of October, 1983

ORDERED that plaintiffs' motion for a temporary restraining order is granted; and it is further

ORDERED that the defendant Legal Services Corporation is enjoined from proceeding with its meeting scheduled for October 13, 1983, in Salt Lake City, Utah, and from holding that meeting until October 22, unless the defendant provides at least seven days actual notice of such meeting, by publication and circulation of a notice in the Federal Register; and it is further

ORDERED that plaintiffs will post a bond in a cash amount of \$ 1,000 or an equivalent surety bond; and it is further

ORDERED that plaintiffs will file a motion for a preliminary injunction no later than October 14, 1983; and it is further

ORDERED that defendant will file an opposition to plaintiffs' motion no later than October 19, 1983.


United States District Judge

\$1,000 cash posted by plffs.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 83-2068

September Term, 1983

Civil Action No. 83-3005

Legal Services Corporation,
Appellant

v.

Coalition For Legal Services, et al.,
Appellees

United States Court of Appeals
for the District of Columbia Circuit

FILED OCT 13 1983

GEORGE A. FISHER
Clerk

Before: Wright, Edwards and Ginsburg*, Circuit Judges

O R D E R

Upon consideration of appellant's motion for summary reversal or, in the alternative for a stay of the district court order granting appellees' motion for a temporary restraining order, it is

ORDERED by the Court that the motion is denied. The grant of a temporary restraining order is generally not appealable. Adams v. Vance, 570 F.2d 950, 953 (D.C. Cir. 1977). So far as we can tell from the papers filed by appellants, this case does not fit within any of the exceptions to this general rule. But even if we were to accept appellant's allegation that this case involves an appealable preliminary injunction rather than a temporary restraining order, we would still deny appellant's motion. We find that appellees have made a strong showing of potential irreparable harm if the temporary restraining order is not continued, while appellant has made no such showing. See Washington Metropolitan Area Transit Commission v. Holiday Tours Inc., 559 F.2d 841 (D.C. Cir. 1977). For these reasons, as well as those stated from the bench by Judge Parker, appellant's motion is denied.

Per Curiam

For the Court:

GEORGE A. FISHER, Clerk

BY: *Robert A. Bonner*

Robert A. Bonner
Chief Deputy Clerk

Circuit Judge Ginsburg did not participate in this order.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 84-5079

September Term, 1983
Civil Action No. 83-2714

FOUNDATION ON
ECONOMIC TRENDS, et al.

v.

MARGARET M. HECKLER, in her
official capacity as Secretary of Health and Human Services, et al.

United States Court of Appeals
for the District of Columbia Circuit

FILED FEB - 6 1984

GEORGE A. FISHER
CLERK

Before ROBINSON, Chief Judge, and Wald and Scalia,*
Circuit Judges.

ORDER

Upon consideration of appellants' motion for summary reversal and for injunctive relief, and of appellees' opposition thereto, it is

ORDERED by the Court that the order of the District Court denying injunctive relief is reversed; and it is

FURTHER ORDERED that the Recombinant DNA Advisory Committee is enjoined from considering, either in open or closed session, and from acting upon, at its February 6, 1984 meeting, the Advanced Genetics Sciences' proposal to field test genetically engineered Pseudomonas strains. See 45 Fed. Reg. 696, 700 (Jan. 5, 1984).

Every portion of every advisory committee meeting must be opened to the public to the fullest extent possible; once challenged, it is the burden of the agency to demonstrate fully and prospectively why any portion of the meeting should be closed. See Common Cause v. Nuclear Regulatory Comm'n, 674 F.2d 921, 928-929 (D.C. Cir. 1982); 45 C.F.R. § 11.5(a)(6)(ii)(f) & (h) (1983). The agency must publish adequate notice in the Federal Register detailing the extent to which the public will be permitted to participate in the meeting. 45 C.F.R. § 11.5(a)(2)

*Circuit Judge Scalia did not participate in the consideration or disposition of the foregoing motion.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No.

September Term, 19

- 2 -

(i)(b). Moreover, the notice must state the specific reasons why designated portions of a meeting will be closed. Id.; 45 C.F.R. § 11.5(a)(6)(i), (ii)(f). Very importantly, it is the responsibility of the agency to provide detailed justification to the District Court why challenged material is exempt from open discussion. Pacific Architects & Eng'rs v. Renegotiation Bd., 505 F.2d 383, 385 (D.C. Cir. 1974).

Our examination of the record discloses that the agency has not complied with these requirements in this case. Unless and until it does so, it is not authorized to hold a meeting on the proposal in question under the Federal Advisory Committee Act, 5 U.S.C. app. I, § 10 (1982).

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC CITIZEN,)
)
 Plaintiff,)
)
 v.) Civil Action No. 85-3233
) (Judge Oberdorfer)
)
 COMMISSION ON THE BICENTENNIAL)
 OF THE UNITED STATES CONSTITUTION,)
)
 Defendant.)

ORDER

This matter is before the Court on plaintiff's motion for a preliminary injunction. Upon consideration of the parties' arguments, memoranda, affidavits, and exhibits, it is this _____ day of _____, 1985 hereby

ORDERED that plaintiff's motion for a preliminary injunction is granted; it is further

ORDERED that defendant Commission on the Bicentennial of the United States Constitution is enjoined from closing its November 24-25, 1985 and subsequent meetings in violation of the Federal Advisory Committee Act; and it is further

ORDERED that defendant shall provide reasonable advance notice of its future meetings in compliance with the Federal Advisory Committee Act.

Louis F. Oberdorfer
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC CITIZEN,)
)
 Plaintiff,)
)
 v.) Civil Action No. 85-3233
) (Judge Oberdorfer)
 COMMISSION ON THE BICENTENNIAL)
 OF THE UNITED STATES CONSTITUTION,)
)
 Defendant.)

AFFIDAVIT OF ALAN B. MORRISON

I, Alan B. Morrison, hereby state as follows:

1. I am the Director of Public Citizen Litigation Group. In that capacity, I am representing Public Citizen in this matter.
2. Public Citizen is a national non-profit public interest organization that is interested in following the activities of the Commission. Public Citizen is interested in attending the Commission's meetings and reviewing its records. However, as a result of the Commission's closed meetings, Public Citizen has been unable to observe and participate in Commission meetings.
3. On June 25, 1985, President Reagan appointed twenty members of the Commission on the Bicentennial of the United States Constitution (the "Commission"), who were then sworn in by Vice President Bush on July 30, 1985. See First Report of the Commission on the Bicentennial of the United States Constitution 1 (Sept. 17, 1985) ("Report") (Attached as Exhibit A). The President also designated Chief Justice Warren E. Burger as the

chairman of the Commission. Id. The Commission members include two members of the House of Representatives, three United States Senators, and three members of the federal judiciary. See List of Members Appointed to the President's Commission on the Bicentennial of the Constitution (Attached as Exhibit B).

4. On July 29-30, 1985, the Commission held its first meeting in Washington D.C. See Exhibit A at 2. The Commission closed this meeting to the public and did not give reasonable advance public notice of this meeting. See *Washington Post*, Aug. 8, 1985, at A23 (Attached as Exhibit C) and *Washington Post*, Aug. 22, 1985, at A21 (Attached as Exhibit D).

5. On August 22-23, 1985, the Commission held its second meeting in Salt Lake City, Utah. See Exhibit A at 2. This meeting was also closed to the public. See *Salt Lake Tribune*, Aug. 24, 1985, at B1 (Attached as Exhibit E). The Commission again did not provide reasonable advance notice of this meeting to the public.

6. On September 17, 1985, the Commission conducted a public hearing to which it invited nineteen private organizations to present their plans for commemorating the bicentennial of the Constitution. Exhibit A at 2. I understand that attendance by members of the Commission at this hearing was sparse and that the Commission transacted no business at it.

7. In an attempt to gain access to Commission meetings, I wrote a letter to the staff director of the Commission on behalf of Public Citizen. This letter, which was hand-delivered

on September 23, 1985, is attached as Exhibit F.

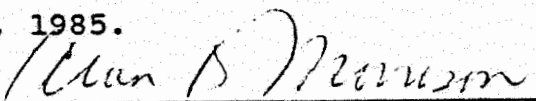
8. On October 10, 1985, I received a response to this letter from Mark W. Cannon, Staff Director of the Commission, which is attached as Exhibit G. Although denying the request to open the Commission's meetings, the response did not deny that the Commission was not complying with the Federal Advisory Committee Act, but asserted instead that it was not subject to that Act.

9. The Commission plans to hold its next meeting on November 24-25, 1985. Exhibit A at 2. The Commission has not published advance notice of this meeting in the Federal Register or provided other public notice designed to ensure that all interested persons will be notified of the meeting. The Commission intends to close this meeting to the public. See Exhibit G.

10. There has been a great deal of public and press interest in the bicentennial of the Constitution and the work of the Commission. See, e.g., Nevins, The Constitution Chronicles, New York Times Magazine, Sept. 22, 1985, at 106 (Attached as Exhibit H); and Cannon, Why Celebrate the Constitution?, Toward the Bicentennial of the Constitution, National Forum, Fall 1984 (Attached as Exhibit I).

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 23, 1985.



Alan B. Morrison

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC CITIZEN,)
)
 Plaintiff,)
)
 v.) Civil Action No. 85-3233
) (Judge Oberdorfer)
 COMMISSION ON THE BICENTENNIAL)
 OF THE UNITED STATES CONSTITUTION,)
)
 Defendant.)

LIST OF EXHIBITS TO AFFIDAVIT
OF ALAN B. MORRISON

- A. First Report of the Commission on the Bicentennial of the United States Constitution (Sept. 17, 1985).
- B. List of Members Appointed to the President's Commission on the Bicentennial of the Constitution.
- C. *Washington Post*, Aug. 8, 1985, at A23.
- D. *Washington Post*, Aug. 22, 1985, at A21.
- E. *Salt Lake Tribune*, Aug. 24, 1985, at B1.
- F. Letter to Mark W. Cannon, Director of Commission on the Bicentennial of the United States Constitution, from Alan B. Morrison, Counsel to Public Citizen (Sept. 23, 1985).
- G. Letter to Alan B. Morrison, Counsel to Public Citizen, from Mark W. Cannon, Staff Director of Commission on the Bicentennial of the United States Constitution (Oct. 10, 1985).
- H. Nevins, *The Constitution Chronicles*, *New York Times Magazine*, Sept. 22, 1985, at 106.
- I. Cannon, *Why Celebrate the Constitution?, Toward the Bicentennial of the Constitution*, National Forum, Fall 1984.

**FIRST REPORT
OF THE
COMMISSION ON THE BICENTENNIAL
OF THE
UNITED STATES CONSTITUTION**

September 17, 1985

Executive Summary of First Report

Commission on the Bicentennial of the United States Constitution

September 17, 1985

The twenty-three member Commission on the Bicentennial of the United States Constitution was established by Act of Congress, Public Law 98-101. The President designated Chief Justice Warren E. Burger as Chairman of the Commission, and 20 members of the Commission were sworn in by Vice President Bush on July 30, 1985. The Commission appointed Mark W. Cannon as Staff Director and Ronald Mann as Deputy Staff Director.

The Commission met July 29-30 in Washington, D.C., and August 22-23 in Salt Lake City, Utah. Today, September 17, the Commission conducts public hearings at the Supreme Court of the United States at which 19 public and private organizations describe their plans and activities to commemorate the Bicentennial of the Constitution. This meeting helps inform the Commission as well as interested groups about current and contemplated Bicentennial activities.

The Commission will emphasize the educational opportunities afforded by the Bicentennial of the United States Constitution. The most lasting honor we can bestow upon the generation that gave us our form of government is to foster among the people of the United States a just appreciation and a clearer understanding of their constitutional heritage. In the words of the Commission's Chairman it is an occasion for "a history and civics lesson for all of us." This commemoration can help us understand better the conditions that underlie human freedom, and it can enlighten our approaches to constitutional and policy issues that lie ahead.

The Commission proposes that the celebration of the historical aspects of the Constitution's Bicentennial have three phases, corresponding to the three-year period from 1987 through 1989. From now until September 17, 1987--the Bicentennial of the signing of the Constitution in the Philadelphia Convention--some emphasis will be placed on the events leading up to the Convention, the writings of the Founders, and analysis of the Constitution itself. The year 1988 should be one of public enlightenment about the deliberations during 1788 by the people in every State on the merits of the proposed Constitution, which led to ratification. The year 1989 will be dedicated to the formation of the first government and to the 200 years of the historical development of the three branches of government under the Constitution, and will prepare the way for a celebration of the Bicentennial of the Bill of Rights.

The success of the commemoration of the Bicentennial of the Constitution depends in a major way on the widespread and enthusiastic involvement of private groups and organizations to enlarge public understanding and appreciation of the Constitution. Accordingly, a major goal of the Commission will be to stimulate pervasive activity by thousands of organizations at the grass roots level that will educate their members and others about the Constitution and the unique aspects of that document to ensure freedom under law. The Commission will also work closely with State Bicentennial Commissions, federal agencies, and Congress in planning and coordinating government support and involvement.

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Establishment of the Commission

The Commission on the Bicentennial of the United States Constitution was established by Act of Congress, Public Law 98-101, signed by the President on September 29, 1983. In accordance with Section 6(e) of the Act, the Commission hereby submits this Report on its activities.

Membership of the Commission

The Act calls for the Commission to consist of twenty-three members, with twenty members appointed by the President, including four from recommendations made by the Speaker of the House of Representatives, four from recommendations made by the President pro tempore of the Senate, and four from recommendations made by the Chief Justice of the United States. Members named by the Act are the Chief Justice of the United States, or his designee; the President pro tempore of the Senate, or his designee; and the Speaker of the House of Representatives, or his designee.

On June 25, 1985, the President announced his intention to appoint members of the Commission on the Bicentennial of the United States Constitution. The President designated Chief Justice Warren E. Burger as Chairman. Commission members were sworn in and given their commissions by the Vice President of the United States in a White House ceremony on the morning of July 30. Members of the Commission are:

Warren E. Burger, Chairman	Edward P. Morgan
Frederick K. Biebel	Betty Southard Murphy
Lindy Boggs	Thomas H. O'Connor
Herbert Brownell	Phyllis Schlafly
Lynne V. Cheney	Bernard H. Siegan
Philip M. Crane	Ted Stevens
William J. Green	Obert C. Tanner
Edward Victor Hill	Strom Thurmond
Cornelia G. Kennedy	Ronald H. Walker
Edward M. Kennedy	Charles E. Wiggins
Harry McKinley Lightsey, Jr.	Charles Alan Wright
William Lucas	

Commission Headquarters

The Commission on the Bicentennial of the United States Constitution has been assigned offices at 734 Jackson Place, N.W., Washington, D.C. These offices will support no more than 25 staff members. Obviously a much larger space will be required. We are informed that the 1976 American Revolution Bicentennial Administration had 250 staff members at the height of its operations. The Chairman has met with the Administrator of the General Services Administration and requested that the necessary space be assigned.

Commission Meetings

The Commission has held two meetings: July 29-30, in Washington, D.C., and August 22-23, 1985, in Salt Lake City, Utah. On September 17, the date of this Report, the Commission conducts public hearings at the Supreme Court of the United States in Washington, D.C., at which nineteen public and private organizations are testifying about their plans for commemorating the Bicentennial of the Constitution. This is a first step to inform the Commission about all pending or contemplated activities by other governmental bodies and private entities as well as receive recommendations for Commission activities.

The Commission has scheduled future meetings for November 24-25, 1985; February 1-2, 1986; April 13-14, 1986; and June 27-28, 1986.

Commission Staff

Public Law 98-101 provides that the Commission shall appoint a Staff Director and may appoint up to five additional staff members paid with appropriated funds.

On July 16, 1985, after the President's announcement of the Commission's membership and prior to the first meeting of the Commission, Chief Justice Warren E. Burger, as Chairman of the Commission, appointed a Search Committee to recommend to the Commission a candidate for Staff Director. Commissioners Biebel, Cheney, Morgan, and Walker were appointed to the Search Committee, with Betty Southard Murphy appointed to chair the Committee.

After an extended search and review of numerous persons, the Commission, upon unanimous recommendation of the Search Committee, appointed Mark W. Cannon as Staff Director and Ronald Mann as Deputy Staff Director.

Committees of the Commission

The following committees and subcommittees of the Commission have been created to date:

Personnel/Administration Committee

Finance Committee

Projects and Events Committee

- Subcommittee on Education
- Subcommittee on Private Associations and Organizations
- Subcommittee on the Media

Committee on Government Liaison

- Subcommittee on Federal Liaison
- Subcommittee on State/Local Liaison
- Subcommittee on International Liaison

Recommendation for Amendment of Public Law 98-101

The purpose of the Commission, as described in Section 3 of Public Law 98-101, is to "promote and coordinate activities to commemorate the bicentennial of the Constitution," which was signed at the Constitutional Convention on September 17, 1787. In its general language, this is similar to the charge that was given to the American Revolution Bicentennial Commission (ARBC) and to its successor, the American Revolution Bicentennial Administration (ARBA), for the commemoration of the American Revolution Bicentennial. The challenge facing this Commission in performing its statutory responsibilities perhaps is best illustrated by a few comparative statistics:

(1) **Timing:** ARBC was established on July 4, 1966, fully ten years prior to the commemoration date of the American Revolution Bicentennial. While ARBC encountered subsequent delays, culminating in its reorganization as ARBA in 1974, there was nonetheless early opportunity for planning the American Revolution Bicentennial. The Commission on the Bicentennial of the Constitution has been in effect for less than two months as of the date of this Report and will have met three times before the due date of this Report. The time pressures place the Commission under great handicaps with its mandate to promote and coordinate our country's commemoration of its fundamental law. The Commission will therefore proceed with great expedition to enlist a staff and advisory bodies.

(2) Funding: ARBC/ARBA received \$51,871,000 in appropriated funds between fiscal years 1969 and 1977. Another \$16 million was made available to ARBA-approved projects through Title X job-impact grants. During fiscal years 1975 and 1976 alone, Congress appropriated another \$50,300,000 to federal agencies and the District of Columbia for American Revolution Bicentennial activities. In contrast, Public Law 98-101 authorized an appropriation of \$300,000 for fiscal year 1984 to carry out the purposes of the Act. The Commission not having been constituted until July, 1985, that authorization was replaced by a supplemental appropriation of \$331,000, which should be available shortly to the Commission. For fiscal year 1986, an amended appropriation request of \$775,000 for minimal staffing and "start-up" expenses has been requested for the Commission.

In short, the 1976 commemoration had ten years for planning and enjoyed more than \$118 million in appropriated funds, apart from over \$23 million in other funds; this Commission has less than two years before the opening of the anniversary year of 1987 to promote and coordinate the commemoration of the Nation's Founding charter, with a little more than \$1 million having been proposed but not yet appropriated through 1986.

The Commission is therefore urging that its authorizing statute be amended in response to the threat posed to the successful execution of the Commission's responsibilities by the shortage of time and the modest initial supporting appropriations. Changes requested include:

(1) an amendment to permit the Commission to authorize the production of coins and medals and to allow the Commission to use the official emblem of the Bicentennial to raise revenue for the commemoration, with penalties for its unauthorized use;

(2) removal of the limitation on the number of Commission staff who may be compensated through appropriated funds;

(3) exemption from Civil Service regulations of Commission staff paid from privately donated funds; and

(4) raising the ceiling on the amount an individual can contribute to \$250,000 per annum and on the amount a corporation, partnership, or other business organization can contribute to \$1,000,000 per annum.

**General Framework for the Commemoration of the Two Hundredth
Anniversary of the Formation of the Constitution of the United States**

Section 6(e) of the Act establishing the Commission requires that the Commission submit to the three branches of the federal government a "comprehensive report incorporating specific recommendations of the Commission for commemoration and coordination of the bicentennial and related activities" within two years of the Act's enactment. Congress intended that, by the due date of this Report--September 29, 1985--the Commission would have been functioning for at least twenty months (see Senate Report No. 98-68). Instead, the Commission has been functioning for less than two months, without an appropriation for a Staff Director and a staff. The Chief Justice assigned five members of the Supreme Court staff to carry on preliminary work and preparation for two meetings of the Commission.

The Commission is therefore not in a position to make a comprehensive Report, but only a preliminary Report of the general framework of the Bicentennial commemoration.

Significance of the Occasion

At the first meeting of the Commission the Chief Justice as Chairman stated his view that the occasion would afford an opportunity for "a history and civics lesson for all of us," with emphasis on "the utter uniqueness" of the American Constitution in creating a system of government controlled by the governed. The Constitution, he noted, "is what we did with our independence."

In the first number of The Federalist in October of 1787, Alexander Hamilton pointed to the momentous importance of the question then before the American people: whether to approve the new Constitution their delegates had recently signed in Philadelphia. He wrote:

The subject speaks its own importance; comprehending in its consequences, nothing less than the existence of the UNION, the safety and welfare of the parts of which it is composed, the fate of an empire, in many respects, the most interesting in the world. It has been frequently remarked, that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not, of establishing good government from reflection and choice, or whether they are forever destined to depend, for their political constitutions, on accident and force.

In the years 1787 to 1789, Americans proved to the world that a free people can indeed establish good government through reflection and choice, placing self-government on a firm foundation and giving hope to mankind.

In celebrating the Bicentennial of our Declaration of Independence in 1976, we honored the heroes of our struggle to secure independence from a distant government insensitive to people's needs and to secure the inalienable rights so eloquently described in the Declaration of 1776. In the Bicentennial years ahead, we shall pay tribute to and celebrate the wisdom of our Founders in framing for this Nation a form of government which implements the Declaration of July 4, 1776, and which has for two centuries secured for Americans their natural rights to "Life, Liberty and the pursuit of Happiness."

The Commission will seek to encourage a spirit of inquiry for the celebration as we approach the Bicentennial. The Constitution, as the guardian of our liberties, should be honored from the heart as well as the mind. The Constitution was a product of reflection and choice, a work of the mind reflecting the hopes and dreams of philosophers and scholars of government. It embodies the principles constituting us as a self-governing Nation dedicated to the rule of law. The Commission regards the approaching commemoration as an historic opportunity for all Americans to learn about and recall the achievements of our Founders and the knowledge and experience that inspired them, the nature of the government they established, its origins, its character, and its ends, and the rights and privileges of citizenship, as well as its attendant responsibilities. The Commission will seek to encourage a truly national celebration that instills in every citizen an awareness of the Constitution's preeminent role in our unique and profound experiment in self-government.

Scope of Celebration

Throughout the territory under the jurisdiction of the United States, and in foreign states as well, the two hundredth anniversary of the formation of the Constitution will be celebrated and continue through 1989, the year the government was formed under the Constitution. Every State, city, town, and hamlet, every organization and institution, and every family and individual in the Nation will be invited to participate. Each community is encouraged to conduct its own commemoration, with such cooperation and assistance as the Commission on the Bicentennial and the local and State Constitution Commissions can provide.

We recognize the similarities and the differences between the approaching Bicentennial and the Bicentennial of the American Revolution of 1776. In 1776, we confirmed our independence. From 1787 to 1789, we built a new and unique form of government. The history of the 20th century shows that it is one thing to win a revolution, and quite another to build a new Nation and a system of government faithful

to the principles for which the revolution was fought. The success with which Americans secured their Revolution through the establishment of representative institutions is unparalleled, and is a story that deserves to be told. The United States was built upon and remains committed to the foundation of a written Constitution designed to establish a government and preserve individual freedom and opportunity. The themes we must develop for the Bicentennial of 1787-1789 consist not only of the relation of the Constitution to the Declaration of Independence, but also of the Constitution's own history, the struggles and trials to secure it, and the Constitution's contribution to American life and the art of government.

Each year of the Constitution Bicentennial period has a distinct significance for the Founding of America. The Commission proposes that the celebration of the Bicentennial of the Constitution have three phases, corresponding to the three-year period from 1987 through 1989. The commemoration should be grounded on the historical events of 200 years ago, but the scope of the activities and celebration should include the entire 200 years of the American experience right up to the present. The evolution of the Constitution to meet new needs will be treated.

(1) 1987: "Framing the Constitution." The year 1987 should be dedicated to the memory of the Founders and the great document that they drafted in Philadelphia. The celebration during 1986 and 1987 should focus on events leading up to the Constitutional Convention in Philadelphia in the summer of 1787. The anniversary of the Convention's adoption of the Constitution on September 17, 1987, will provide an occasion for fitting ceremonies, both solemn and festive, throughout the Nation. The larger scope of the celebration during 1986 and 1987 should be of an educational nature, with particular attention to the reasons for calling the Constitutional Convention, the strengths and weaknesses of the Articles of Confederation, the moral, political, and economic thought of the Founders; the influence of the Western philosophical and religious tradition upon their lives and work; the discussions and debates within the Convention; and analysis of the Constitution itself.

(2) 1988: "Ratifying the Constitution: The People Consent." In 1988, the commemorative theme should be the great national debate following upon the adjournment of the Philadelphia Convention on September 17, 1787. The two hundredth anniversary of the ratification of the Constitution by the people of nine States will occur in 1988. The year 1988 should thus be one of public enlightenment about the exciting and learned deliberations, such as The Federalist papers, undertaken by the people in every State over the merits of the proposed Constitution. The period 1787-1789 was one of the most dramatic periods in world history, with "the fate of an empire,

in many respects, the most interesting in the world" hanging in the balance. Fostering an understanding of and appreciation for the majesty of the drama of a freedom-loving people's overcoming obstacles and choosing for itself a form of government through discussion and debate should be our primary goal during this phase of the celebration.

(3) 1989: "Establishing a Government under the Constitution." The year 1989 marks the two hundredth anniversary of the establishment of the Legislative, Executive, and Judicial Branches of the federal government pursuant to the Constitution, and of the inauguration of George Washington as the first President of the United States. In 1989, the commemoration should focus primarily on the relationship of and 200 years of historical development of the three branches of government under the Constitution. This phase of the celebration should include all agencies of the government and their relationship to the American people, not just the structure of government.

The year 1789 was when the first Congress drafted proposed amendments to the Constitution that became our Bill of Rights upon their ratification in 1791. By commemorating in 1989 Congress's adoption of those amendments, we will prepare the way for a celebration of the Bicentennial of the Bill of Rights.

James Madison, in the fifty-first paper of The Federalist, wrote:

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controuls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to controul the governed; and in the next place, oblige it to controul itself.

The mechanisms of checks and balances and the authority of the people to control their government were unique. The American people today enjoy the two great ends of the American Revolution: representative government and the maximum individual freedom compatible with public order that we call "ordered liberty."

What is it about the form of government the Founders devised that enabled us in the short space of two hundred years to become a great world power while retaining and extending the freedoms all people yearn for? Building upon increased constitutional understanding fostered during the next three years, we should devote this third phase to addressing the formation of the federal government and the role it has played in securing freedom and prosperity under the Constitution.

Among the reasons for placing some emphasis upon commemorating the creative period of the Founding of the Constitution are the following:

(1) The 200th anniversary being celebrated during the period of the existence of the Commission is of the writing and ratification of the Constitution and of the government it established.

(2) A major reason for the study of history is to increase understanding of the human condition in varying circumstances. The establishment of the United States of America was a remarkable turning point in human history, worthy of being understood in its own right.

(3) The Senate Report on the Act creating this Commission noted that we have gone through two decades in which the study of history has been slighted. The Commission recognizes the growing desire of the American people to reverse this trend, and to understand the history that has shaped the American Nation.

(4) Studying history will enrich our understanding of the present and of the future by illuminating the reasons for failures and successes of the past. The history of the United States of America relates directly to the most precious human condition—freedom to think, speak, write, and create, and freedom to possess diverse political, social, and religious views. Throughout the history of nations, such freedom has rarely been allowed and, when it was available, has rarely endured. As we look toward the future, it is particularly important that we ask what it was about our Founders' thinking and the culture, political system, and governmental structure that emerged from the Constitution, that produced two centuries of liberty under law.

While individuals may differ over answers to that critical question, it is safe to say that if we neglect to think about it, the probability of our constitutional freedoms being eroded or toppled is increased.

Numerous questions arise from time to time as to what policies our republic should fashion and what amendments to the Constitution, if any, should be added. Newspapers, periodicals, and the electronic media cover such issues extensively. Because education of the public about the Founding period is uncommon, however, it is imperative that the Commission work—in conjunction with other institutions, including the media—to fill the educational gap that exists with respect to the origins of the American constitutional system.

No framework proposed by the Commission can possibly anticipate all the activities appropriate to a celebration of the Constitution. Rather than attempt the impossible, the Commission recommends the above general framework for commemorating the legacy of 1787 while at the same time welcoming the diversity that is a hallmark of American society.

Cooperation of the States and Their Subdivisions

A first order of business for the Commission is to invite the States and their subdivisions, under the direction of their respective Governors and local authorities, to cooperate with the Commission. That process has begun. The Commission urges the

appointment of a Constitution Commemoration Commission in every State and Territory of the United States as soon as possible. Such commissions are already in place in a number of States.

These State commissions are urgently needed to initiate, coordinate, and supervise Bicentennial celebrations in the States and Territories in cooperation with the national Commission. Where legislation is needed for a State Commission to be established, the Commission will urge that the steps necessary for Bicentennial planning in the interim be taken forthwith. The Commission has already prepared a generic bill for use by the States. The Commission, working with the State commissions, will also encourage the mayors and other city officials to appoint Constitution committees as early as possible in order to prepare for the celebration.

The Commission contemplates preparation of a booklet that will be distributed to the States detailing some of the best ideas and suggestions it has received. Through the staff and meetings with members of the State commissions, it will continue to coordinate and share ideas.

This organizational plan anticipates the State commissions' assumption of responsibility for promoting various forms of celebration within their States. Where such State commissions or executive committees exist, communities and organizations should cooperate with them so that comprehensive and well-balanced commemorative programs can be assured in each State.

Participation of Private Associations and Organizations

The success of the celebration of the Bicentennial of the Constitution depends in a major way on the widespread and enthusiastic involvement of private groups and organizations to enlarge understanding and appreciation of the Constitution of the United States.

A major goal of the Commission will be to stimulate massive activity by thousands of organizations that will educate their constituencies and others about the Constitution and the great leap forward in freedom under law that the Constitution represented. It is essential that the celebration depend on the grass-roots involvement of citizens and their organizations, rather than on the central planning and control of a federal agency, for which there is neither time nor resources. Many existing associations will be able, without great additional cost, to devote programs and publications to constitutional themes, reaching millions of citizens in a more effective way than can any costly system of national programs.

Moreover, the practice of letting individuals and organizations act freely with their own emphasis is inherent in our constitutional system. It is therefore a very appropriate reflection of that which is being celebrated—the Constitution of the United States—to encourage widespread involvement by thousands of associations in the educational mission of teaching about our constitutional heritage: the Constitution's origins, its drafting, its ratification, and the government created under the Constitution. The precise treatment of amendments to the Constitution will develop from further study and consideration. Clearly, when we speak of "the Constitution" we mean the whole Constitution.

The Commission will therefore urge all organizations of whatever character to begin to plan for the celebration within their respective organizations, offering its support and encouragement to them as they prepare their plans and programs. It is hoped that organizations will devote time at their national conventions and other periodic meetings to speakers on the Constitution, and will include feature articles on the Constitution in their national publications. Such activities could be assisted by personal meetings of organization leaders with the Commission Chairman, members, or staff and with a Commission program of technical assistance in helping to supply ideas and historical materials of interest to organizations. A senior member of the Commission staff will be assigned to work with private groups.

Cooperation and Participation of the Government of the United States

The Commission seeks cooperation, advice, and assistance from all departments and agencies of the federal government, and from both houses of Congress, in carrying out its mission. Some governmental agencies have developed programs over the past three to five years. The Bicentennial of the Constitution provides a fitting occasion for the three branches of the federal government to reflect upon their own creation and upon the grand design of which they are each a part. The Commission therefore encourages and supports efforts by the three branches of government to promote understanding of the Founders' intentions in creating them in such form as they did, and with such powers and limitations as they did.

Creation of National Holiday

The Commission supports the creation of a one-time National Holiday on Constitution Day, September 17, 1987, the date marking the Bicentennial of the adoption of the Constitution by the Constitutional Convention.

Provisional List of Projects to be Undertaken or Encouraged by the Commission

Clearinghouse: The Commission will undertake to serve as a central clearinghouse of information about Bicentennial plans and events, and will establish a toll-free number for those seeking information on commemorative activities. A staff member will in due course be assigned to this function.

Calendar of Commemorative Dates and Events: The Commission will publish a calendar of commemorative dates during the Bicentennial period, and will issue a schedule of events of national interest that are planned for those dates.

Handbook of Bicentennial Planning: The Commission will develop and distribute a handbook on planning projects and events commemorating the Bicentennial of the Constitution.

Newsletter: The Commission will publish and distribute a newsletter designed to promote the commemoration of the Bicentennial by organizations and groups at the national, State, and local levels.

Constitution Speakers' Bureau: The Commission will encourage every State Commission to identify individuals who are knowledgeable about our Constitution's history and have indicated a willingness to speak to organizations and associations requesting a Constitution speaker. The Commission will establish a National Speakers' Bureau.

Development of Educational Materials: The Commission will work closely with the educational community, encouraging the development of educational materials about the Constitution and the Founders, and supporting existing materials, for distribution to schools and libraries. The use of primary documents in such materials is especially encouraged so that the written record of our Nation's Founding is made available and familiar to our young people.

Contest Activities: The Commission wishes to open every avenue of appropriate expression with which students and teachers can participate in the commemoration of the Bicentennial of the Constitution. It will therefore encourage educational competitions in a variety of mediums. In selecting themes for these competitions, special attention should be given to the background of the Constitution, the Constitutional Convention, the Ratification Period, and the early years of the American Republic.

(1) The Commission will encourage the development of creative writing contests, in which students and teachers will create dramatic material, such as plays

and poems, for use by others during the Bicentennial period. All school and college groups interested in this educational activity should be invited to participate.

(2) The Commission will stimulate the development of a nationwide series of essay and debate contests open to all students in public and private schools; such contests will also be encouraged for law school and college students.

(3) The Commission will encourage the development of a journalistic achievement competition among high school periodicals, with recognition given to schools issuing the best editions devoted to the Constitution. Every high school publishing a periodical should be invited to join in this competition.

(4) The Commission will encourage the development of Bicentennial competitions in the fine arts, such as painting, sculpture, music, dance, and photography, and in the audio-visual arts.

Planting of Constitution Trees: During the American Revolution, the Sons of Liberty, led by Samuel Adams, Paul Revere, and others, gathered under Liberty Trees, which served as symbols of their aspirations. The planting of commemorative trees has become a part of the American tradition and was a much-loved aspect of the celebration of the Sesquicentennial of the Constitution. During the Bicentennial of George Washington's birth in 1932, some 35 million trees were planted to honor Washington. The Commission will encourage organizations to plan for the ceremonial planting of Constitution Trees and perhaps other florae throughout America and living as lasting tributes to the Constitution.

To illustrate a few of the concrete steps that have been taken in even the brief period of the past sixty days, the following may be of interest:

(1) Exploratory discussions have been opened with persons and entities in a position to sponsor a national essay contest in every high school in the United States in cooperation with Bar Associations.

(2) Exploratory discussions have been held with another entity with a view to commissioning a large life-size mural of the Inauguration of George Washington in New York on April 30, 1789. Possible uses of this mural include placing it in locations where it will be seen by a great many people with copies of it made available, possibly to all high schools in the United States.

(3) Exploratory discussions have commenced with a view to commissioning a copy of the Howard Chandler Christie painting of the signing of the Constitution with the figures of George Washington, Ben Franklin, James Madison, and others readily identifiable. One possible use of this will be to provide copies for educational institutions in the United States.

(4) Since television will be one of the most obvious and valuable means of carrying the messages of the Bicentennial to the greatest number of people, studies have been underway for some months by qualified persons to develop films about events of special interest relating to the evolution of the Constitution and constitutional government. One example is found in the episode in which Washington and his Cabinet were struggling with a serious problem with England over the meaning of the Treaty of Paris. Jefferson, as Secretary of State, was authorized to ask the Supreme Court of the United States for an opinion on the legal aspects and meaning of the treaty. After careful consideration, the Supreme Court of the United States declined to advise the President and the Cabinet. This is a classic illustration of the separation of powers and is, in a sense, the genesis of the political question doctrine.

Another example is found in John Marshall's only argument before the Supreme Court of the United States in the case of Ware v. Hylton. Marshall was representing Virginia debtors, and the issue was the form in which their debts to British creditors would be paid. The treaty had provided the standards. After lengthy arguments, the Supreme Court decided that the treaty controlled over the Virginia law in question.

Another example would be dramatic debates between Patrick Henry and the young John Marshall in the Virginia Ratification Convention in Richmond. The Constitution was ratified in Virginia by a vote of 89 to 79.

We are exploring the idea of periodic releases, containing brief sketches of dramatic but often little-known events, to trade publications, airline and hotel magazines, and others.

Preliminary discussions with leaders in the private sector indicate that there is great interest in developing television films to illustrate dramatic episodes in history. We have consulted with producers of television documentary films. It is contemplated that an advisory historical committee will be appointed to assist with the developments of proposals for these kinds of programs for public television and the networks.

Major Commemorative Dates of the Bicentennial of the Constitution of the United States

The following list of commemorative dates excludes traditional July 4th activities. The Commission has been able to include brief descriptions of events of national significance planned for those dates and which have come to the Commission's

attention. (A more comprehensive calendar of commemorative dates of the Constitution's Bicentennial can be found in the Appendix.)

September 11-14, 1986

Two hundredth anniversary of the Annapolis Convention

Five States--New York, New Jersey, Delaware, Pennsylvania, and Virginia--sent a total of twelve delegates to the conference Virginia had proposed to discuss commercial matters. (New Hampshire, Massachusetts, Rhode Island, and North Carolina sent delegates, but they failed to arrive in time). The small attendance made discussion of commercial problems fruitless. On September 14, the Annapolis group adopted a resolution drafted by Alexander Hamilton asking all the States to send representatives to a new convention to be held in Philadelphia in May of 1787. This meeting would not be limited to commercial matters but would address all issues necessary "to render the constitution of the Federal government adequate to the exigencies of the Union."

Annapolis will be the site of a two-day festival (September 12-13, 1986) commemorating the Annapolis Convention (September 11-14, 1786), the harbinger of the Constitutional Convention of 1787. The program will include a scholarly conference and an 18th-century fair.

September 17, 1986

**Constitution Day, the one hundred ninety-ninth anniversary
of the Constitution**

Two major exhibits will open in Philadelphia at Independence National Historical Park. The "Miracle at Philadelphia" exhibit will open in the Second Bank Building, featuring the largest, most comprehensive collection of objects and artifacts of the constitutional period ever assembled, including four drafts of the Constitution and the journals James Madison kept during the Constitutional Convention. "The Great Fabric of America" exhibit will open in the Park's Visitor Center and will feature interactive computers that will challenge visitors' knowledge of the Constitution.

May 25, 1987

**Two hundredth anniversary of the opening
of the Constitutional Convention**

By May 25, 1787, a quorum of delegates from seven States had arrived in Philadelphia in response to the call from the Annapolis Convention, and the meeting convened. Eventually, representatives from all the States attended, with the exception of Rhode Island. The delegates included George Washington, who was elected President of the Convention, Benjamin Franklin, James Madison, Alexander Hamilton, George

Mason, John Dickinson, Gouverneur Morris, James Wilson, Roger Sherman, and Elbridge Gerry.

May 25 is the first major commemorative date during the Bicentennial year of 1987 to provide an occasion for significant ceremonies. Philadelphia plans a gala weekend preceding the Bicentennial of the opening of the Convention, including a concert by the United States Army Band and special ceremonies on the grounds of Independence Hall.

September 17, 1987

**Two hundredth anniversary of the formal signing
of the Constitution and the adjournment of the Constitutional Convention**

Delegates of all twelve States represented in Philadelphia voted to approve the Constitution. Thirty-nine of the forty-two delegates present signed the engrossed copy, and a letter of transmittal to the Continental Congress was drafted.

September 17 has traditionally been celebrated as "Constitution Day." The Commission supports the creation of a one-time National Holiday on this date and considers it the appropriate date for the main national observance during the 1987 Bicentennial year. This day should involve special programs across America.

June 21, 1988

**Two hundredth anniversary of the ratification
of the Constitution**

On June 21, 1788, New Hampshire became the ninth State to ratify the Constitution, nine States being the number sufficient to bring the Constitution into effect. This is obviously an appropriate date for commemorating the democratic process whereby the American people approved the Constitution.

March 4, 1989

**Two hundredth anniversary of the day
the First Congress under the
Constitution met in New York City**

Only eight Senators and thirteen Congressmen convened on this date, and the House of Representatives would not achieve its first quorum until April 1, with the Senate following five days later.

This date should be reserved for commemoration of the Legislative branch of government. The Commission on the United States House of Representatives Bicentenary, the Office for the Bicentennial of the U.S. House of Representatives, and the U.S. Senate Historical Office will assist in coordinating national ceremonies on this date.

April 30, 1989

**Two hundredth anniversary of the inauguration of
George Washington as the first President of the
United States under the Constitution**

The oath of office was administered by Robert R. Livingston, Chancellor of the State of New York, on the balcony of Federal Hall in New York City.

Plans are under discussion for some special focus on this date and place. Federal Hall National Memorial, on the site of the original Federal Hall, will host special ceremonies focusing on the Executive branch of the government.

September 24, 1989

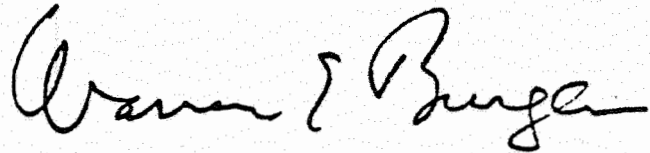
**Two hundredth anniversary of the Federal Judiciary Act
of 1789, which established the Supreme Court
of the United States, thirteen District Courts,
three Circuit Courts, and the Office of the Attorney General**

On this date, there should be a national commemoration of the Judicial branch of government, with appropriate activities in courthouses across the nation.

Conclusion

The Commission believes it has rightly discerned the governing intent of Congress in establishing it—namely, that primary emphasis should be placed on the educational opportunities afforded by the Bicentennial of the United States Constitution. The most lasting honor we can bestow upon the generation that gave us our form of government is to foster among the people of the United States a just appreciation and a clearer understanding of their Constitution. We will make every effort to carry out this mission.

Respectfully submitted,



Chairman of the Commission on the
Bicentennial of the United States
Constitution

To the President
To the Vice President
To the Speaker of the United States House of Representatives
To the President pro tempore of the United States Senate
To the Judicial Conference of the United States

APPENDIX

Calendar of Commemorative Dates for the Celebration of the Bicentennial of the United States Constitution

The source of the following list is Report No. 85-100 S of the Congressional Research Service of the Library of Congress. The list was compiled by Project '87 of the American Political Science Association and the American Historical Association.

March 28, 1785: Mount Vernon Conference. George Washington hosted a meeting at Mount Vernon of four commissioners from Maryland and four from Virginia to discuss problems relating to the navigation of the Chesapeake Bay and the Potomac River. After negotiating agreements, the commissioners recommended to their respective legislatures that annual conferences be held on commercial matters, and that Pennsylvania be invited to join Maryland and Virginia to discuss linking the Chesapeake and the Ohio River.

January 16, 1786: Virginia's legislature adopted a statute for religious freedom, originally drafted by Thomas Jefferson and introduced by James Madison. The measure protected Virginia's citizens against compulsion to attend or support any church, and against discrimination based upon religious belief. The law served as a model for the First Amendment to the United States Constitution.

January 21, 1786: Virginia's legislature invited all the states to a September meeting in Annapolis to discuss commercial problems.

August 7, 1786: The Congress of the Confederation considered a motion offered by Charles Pinckney of South Carolina to amend the Articles of Confederation in order to give Congress more control over foreign affairs and interstate commerce. Because amendments to the Articles required the unanimous consent of the states, an unlikely eventuality, Congress declined to recommend the changes.

September 11-14, 1786: Annapolis Convention. New York, New Jersey, Delaware, Pennsylvania and Virginia sent a total of twelve delegates to the conference that had been proposed by Virginia in January to discuss commercial matters. (New Hampshire, Massachusetts, Rhode Island and North Carolina sent delegates, but they failed to arrive in time.) The small attendance made discussion of commercial matters fruitless. On September 14, the convention adopted a resolution drafted by Alexander Hamilton asking all the states to send representatives to a new convention to be held in Philadelphia in May of 1787. This meeting would not be limited to commercial matters but would address all issues necessary "to render the constitution of the Federal Government adequate to the exigencies of the Union."

February 4, 1787: The end of Shays' Rebellion. General Benjamin Lincoln, leading a contingent of 4,400 soldiers enlisted by the Massachusetts governor, routed the forces of Daniel Shays. A destitute farmer, Shays had organized a rebellion against the Massachusetts government, which had failed to take action to assist the state's depressed farm population. The uprisings, which had begun in the summer of 1786, were completely crushed by the end of February. The Massachusetts legislature, however, enacted some statutes to assist debt-ridden farmers.

February 21, 1787: The Congress of the Confederation cautiously endorsed the plan adopted at the Annapolis Convention for a new meeting of delegates from the states "for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures such alterations and provisions therein."

May 25, 1787: Opening of the Constitutional Convention. On May 25, a quorum of delegates from seven states arrived in Philadelphia in response to the call from the Annapolis Convention, and the meeting convened. Ultimately, representatives from all the states but Rhode Island attended. The distinguished public figures included George Washington, James Madison, Benjamin Franklin, George Mason, Alexander Hamilton, Gouverneur Morris, James Wilson, Roger Sherman and Elbridge Gerry.

May 29, 1787: Virginia Plan proposed. On the fifth day of the meeting, Edmund Randolph, a delegate from Virginia, offered 15 resolutions comprising the "Virginia Plan" of Union. Rather than amending the Articles of Confederation, the proposal described a completely new organization of government including a bicameral legislature that represented the states proportionately, with the lower house elected by the people and the upper house chosen by the lower body from nominees proposed by the state legislatures; an executive chosen by the legislature; a judiciary branch; and a council comprising the executive and members of the judiciary branch with a veto over legislative enactments.

June 15, 1787: New Jersey Plan proposed. Displeased by Randolph's plan, which placed the smaller states in a disadvantaged position, William Patterson proposed instead only to modify the Articles of Confederation. The New Jersey plan would give Congress power to tax and to regulate foreign and interstate commerce, and would establish a plural executive (without veto power) and a supreme court.

June 19, 1787: After debating all the proposals, the convention decided not merely to amend the Articles of Confederation, but to conceive a new national government. The question of equal versus proportional representation by states in the legislature then became the focus of the debate.

July 12, 1787: The Connecticut Compromise (I). Based upon a proposal made by Roger Sherman of Connecticut, the Constitutional Convention agreed that representation in the lower house should be proportional to a state's population (all of the white residents, and three-fifths of the blacks).

July 13, 1787: Northwest Ordinance. While the Constitutional Convention met in Philadelphia, the Congress of the Confederation crafted another governing instrument for the territory north of the Ohio River. The Northwest Ordinance, written largely by Nathan Dane of Massachusetts, provided for interim governance of the territory by Congressional appointees (a governor, secretary and three judges), creation of a bicameral legislature when there were 5,000 free males in the territory, and ultimate establishment of three to five states on an equal footing with the states already in existence. Freedom of worship, right to trial by jury, and public education were guaranteed, and slavery prohibited.

July 16, 1787: The Connecticut Compromise (II). The Convention agreed that each state should be represented equally in the upper chamber.

August 6, 1787: The five-man committee, appointed to draft a constitution based upon 23 "fundamental resolutions" drawn up by the convention between July 19 and July 26, submitted a document containing 23 articles.

August 6-September 10, 1787: The Great Debate. The Convention debated the draft constitution and agreed to prohibit Congress from banning the foreign slave trade for twenty years.

August 8, 1787: The Convention adopted a two-year term for representatives.

August 9, 1787: The Convention adopted a six-year term for senators.

August 16, 1787: The Convention granted to Congress the right to regulate foreign trade and interstate commerce.

September 6, 1787: The Convention adopted a four-year term for the President.

September 8, 1787: A five-man committee, comprising William Samuel Johnson (chair), Alexander Hamilton, James Madison, Rufus King and Gouverneur Morris, was appointed to prepare the final draft.

September 12, 1787: The committee submitted the draft, written primarily by Gouverneur Morris, to the Convention.

September 13-15, 1787: The Convention examined the draft, clause by clause, and made a few changes.

September 17, 1787: All twelve state delegations voted approval of the document. Thirty-nine of the forty-two delegates present signed the engrossed copy, and a letter of transmittal to Congress was drafted. The Convention formally adjourned.

September 20, 1787: Congress received the proposed Constitution.

September 26-27, 1787: Some representatives sought to have Congress censure the Convention for failing to abide by Congress' instruction only to revise the Articles of Confederation.

September 28, 1787: Congress resolved to submit the Constitution to special state ratifying conventions. Article VII of the document stipulated that it would become effective when ratified by nine states.

October 27, 1787: The first "Federalist" paper appeared in New York City newspapers, one of 85 to argue in favor of the adoption of the new frame of government. Written by Alexander Hamilton, James Madison and John Jay, the essays attempted to counter the arguments of anti-Federalists, who feared a strong centralized national government.

December 7, 1787: Delaware ratified the Constitution, the first state to do so, by unanimous vote.

December 12, 1787: Pennsylvania ratified the Constitution in the face of considerable opposition. The vote in convention was 46 to 23.

December 18, 1787: New Jersey ratified unanimously.

January 2, 1788: Georgia ratified unanimously.

January 9, 1788: Connecticut ratified by a vote of 128 to 40.

February 6, 1788: The Massachusetts convention ratified by a close vote of 187 to 168, after vigorous debate. Many anti-Federalists, including Sam Adams, changed sides after Federalists proposed nine amendments, including one that would reserve to the states all powers not "expressly delegated" to the national government by the Constitution.

March 24, 1788: Rhode Island, which had refused to send delegates to the Constitutional Convention, declined to call a state convention and held a popular referendum instead. Federalists did not participate, and the voters rejected the Constitution, 2708 to 237.

April 28, 1788: Maryland ratified by a vote of 63 to 11.

May 23, 1788: South Carolina ratified by a vote of 149 to 73.

June 21, 1788: New Hampshire became the ninth state to ratify, by a vote of 57 to 47. The convention proposed twelve amendments.

June 25, 1788: Despite strong opposition led by Patrick Henry, Virginia ratified the Constitution by 89 to 79. James Madison led the fight in favor. The convention recommended a bill of rights comprising twenty articles, in addition to twenty further changes.

July 2, 1788: The President of Congress, Cyrus Griffin of Virginia, announced that the Constitution had been ratified by the requisite nine states. A committee was appointed to prepare for the change in government.

July 26, 1788: New York ratified by a vote of 30 to 27 after Alexander Hamilton delayed action, hoping that news of ratification from New Hampshire and Virginia would influence anti-Federalist sentiment.

August 2, 1788: North Carolina declined to ratify the Constitution until a bill of rights was added.

September 13, 1788. Congress selected New York as the site of the new government and chose dates for the appointment of and balloting by presidential electors, and for the meeting of the first Congress under the Constitution.

October 10, 1788: The Congress of the Confederation transacted its last official business.

December 23, 1788: The State of Maryland ceded ten square miles to Congress for a federal city.

January 7, 1789: Presidential electors were chosen by ten of the states that had ratified the Constitution (all but New York).

February 4, 1789: Presidential electors voted; George Washington was chosen President, and John Adams Vice-President. Elections of senators and representatives took place in the states.

March 4, 1789: The first Congress convened in New York, with eight senators and thirteen representatives in attendance, and the remainder en route.

April 1, 1789: The House of Representatives achieved a quorum, with 30 of its 59 members present, and elected Frederick A. Muhlenberg of Pennsylvania to be its speaker.

April 6, 1789: The Senate, with 12 of 22 senators in attendance, achieved a quorum and chose John Langdon of New Hampshire as temporary presiding officer.

April 30, 1789: George Washington was inaugurated as the nation's first President under the Constitution. The oath of office was administered by Robert R. Livingston, chancellor of the State of New York, on the balcony of Federal Hall, at the corner of Wall and Broad Streets.

July 27, 1789: Congress established the Department of Foreign Affairs (later changed to Department of State).

August 7, 1789: Congress established the War Department.

September 2, 1789: Congress established the Treasury Department.

September 22, 1789: Congress created the office of Postmaster General.

September 24, 1789: Congress passed the Federal Judiciary Act, which established a Supreme Court, 13 district courts and 3 circuit courts, and created the office of the Attorney General.

September 25, 1789: Congress submitted to the states twelve amendments to the Constitution, in response to the five state ratifying conventions that had emphasized the need for immediate changes.

November 20, 1789: New Jersey became the first state to ratify ten of the twelve amendments, the Bill of Rights.

November 21, 1789: As a result of Congressional action to amend the Constitution, North Carolina ratified the original document, by a vote of 194 to 77.

December 19, 1789: Maryland ratified the Bill of Rights.

December 22, 1789: North Carolina ratified the Bill of Rights.

January 25, 1790: New Hampshire ratified the Bill of Rights.

January 28, 1790: Delaware ratified the Bill of Rights.

February 24, 1790: New York ratified the Bill of Rights.

March 10, 1790: Pennsylvania ratified the Bill of Rights.

May 29, 1790: Rhode Island ratified the Constitution, by a vote of 34 to 32.

June 7, 1790: Rhode Island ratified the Bill of Rights.

January 10, 1791: Vermont ratified the Constitution.

March 4, 1791: Vermont was admitted to the Union as the fourteenth state.

November 3, 1791: Vermont ratified the Bill of Rights.

December 15, 1791: Virginia ratified the Bill of Rights, making it part of the United States Constitution.

updated: September 6, 1985

LIST OF MEMBERS APPOINTED TO THE
PRESIDENT'S COMMISSION ON THE BICENTENNIAL OF THE CONSTITUTION
Appointed June 25, 1985

Honorable Warren E. Burger
Chairman
Chief Justice of the United States
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Honorable Lindy Boggs
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Honorable Herbert Brownell
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Dr. Lynne V. Cheney -
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Honorable William J. Green
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LIST OF MEMBERS APPOINTED TO THE
PRESIDENT'S COMMISSION ON THE BICENTENNIAL OF THE CONSTITUTION
Appointed June 25, 1985

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Mount Zion Missionary
Baptist Church
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Honorable Cornelia G. Kennedy
U.S. Circuit Judge
Sixth Circuit
744 United States Courthouse
Detroit, Michigan 48226

Honorable Edward M. Kennedy
U.S. Senate
113 Senate Russell Office Bldg.
Washington, D.C. 20510

Harry McKinley Lightsey, Jr.
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Corner Green and South Main Street
Columbia, South Carolina 29208

William Lucas
Wayne County Executive
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Thomas H. O'Connor
Department of History
Hovey House
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Chestnut Hill, Massachusetts 02167

Phyllis Schlafly
President
Eagle Forum
68 Fairmount
Alton, Illinois 62002

LIST OF MEMBERS APPOINTED TO THE
PRESIDENT'S COMMISSION ON THE BICENTENNIAL OF THE CONSTITUTION
Appointed June 25, 1985

Bernard H. Siegan
Professor of Law
University of San Diego
San Diego, California 92110

Honorable Theodore Fulton Stevens
U.S. Senate
528 Senate Hart Office Building
Washington, D.C. 20510

Mr. Obert C. Tanner
1930 South State Street
Salt Lake City, Utah 84115

Honorable Strom Thurmond
218 Senate Russell Office Bldg.
Washington, D.C. 20510

Ronald H. Walker
Managing Director and Partner
Korn/Ferry International
Suite 301
1825 K Street, N.W.
Washington, D.C. 20006

Honorable Charles E. Wiggins
Post Office Box 547
Rm. 306
San Francisco, California 94101

Charles Alan Wright
Professor of Law
University of Texas Law School
4117 Townes Hall
727 East 26th Street
Austin, Texas 78705

THURSDAY, AUGUST 8, 1985 A23

With the 200th anniversary of the U.S. Constitution barely two years away, the 23-member **Commission on the Bicentennial** is still looking for a staff director and worrying that it may not have enough time or money to put together an appropriate celebration.

The search committee, chaired by Washington attorney **Betty Southard Murphy**, has gone through resumes from dozens of applicants for the \$86,200-a-year job.

The commission, chaired by Chief Justice **Warren E. Burger**, met for the first time last week at the Supreme Court and voted unanimously to ask Congress to allow it to produce coins, medals and stamps and to allow it to use a logo—still to be designed—to raise revenue.

Worried that the proposed \$775,000 budget for next fiscal year will not be adequate, the commission wants Congress to raise the ceilings on individual contributions. By law, individuals may contribute no more than \$25,000 in any one year to the bicentennial. Corporations are limited to \$100,000 annually.

The meeting, apparently like those of the **Founding Fathers**, was closed to the public. Subsequent meetings, such as one planned Aug. 22 at the **Hotel Utah** in Salt Lake City, also will be closed, according to Supreme Court press officer **Toni House**.

The commission also voted to support the creation of a one-time national holiday on **Constitution Day**, Sept. 17, 1987. That also happens to be **Burger's 80th birthday**.

—Al Kamen

Washington Post A21
August 22, 1985

The Federal Triangle

A21-22 Aug 85 RET

Constitution Panel Meetings Held in Private

The President's Commission on the Bicentennial of the Constitution has decided that its discussions will be held in private.

The first meeting of the commission, July 29-30 at the Supreme Court, was closed to the public and a second meeting scheduled today in Salt Lake City will also be closed, said a spokeswoman for the panel's chairman, Chief Justice Warren E. Burger.

Spokeswoman Toni House said she did not know how many more meetings would be held, but "all or parts of all the rest will be closed."

The major goal of the commission, created by Congress with an initial \$300,000 appropriation, is to inform the public about the Constitution and its importance in securing basic freedoms.

"In terms of what the commission is supposed to represent, which is the maximum of publicity, that's a heck of a way to get started," a Senate staff member who specializes in legal affairs said yesterday.

"I am sure the majority of American people—a good part of whom read newspapers—do not know there is such a thing as the bicentennial commission."

The staff member, who asked not to be named, said, "We're not dealing here with terrorist negotiations. We're dealing here with promotion of values and virtues of the Constitution of the United States."

Members of the commission, which includes senators, judges, business leaders and lawyers, were divided about the reasons for closing the meetings or where the idea came from.

"I think we've decided it's the most efficient way to proceed," said commission member Lynne Cheney, senior editor at Washingtonian magazine. "Since we're late getting started, we wanted to expedite what we have to do."

But Bernard Siegan, a law professor at the University of San Diego, said he did not know the meetings were closed to the public and the matter was not brought up at the first meeting. He declined to comment further.

Another member, Harry Lightsey, dean of the University of South Carolina Law Center, said he believed the first two meetings were closed because of the discussion of personnel matters, which took up a major portion of the first meeting. The commission is authorized to hire staff.

Lightsey added he was "sure the commission meetings generally will be open to the public. I would favor almost all of the meetings being open meetings. I believe in public meetings."

A press release issued after the first two days of commission meetings noted the members voted unanimously to support a number of revisions in the commission statute and create a one-time national holiday on Constitution Day, Sept. 17, 1987, the official date of the Constitution's 200th anniversary.

House said she did not know who decided to close the meetings, but noted the commission is not obligated by law to keep them open.

Plan Studied To Promote Constitution Closed-Door Huddle Followed Precedent

By Paul Rolly
Tribune Staff Writer

A presidential commission conducting closed meetings in its effort to develop a campaign to promote the U.S. Constitution is just following precedent set by "Ben Franklin and those boys who even boarded up the windows to keep eavesdroppers out," the U.S. chief justice said Friday.



"We are following the precedent Justice Burger set 200 years ago by the original drafters of the Constitution," Chief Justice Warren Burger said in defense of the commission's policy to hold most of its meetings behind closed doors.

The Presidential Commission on the Bicentennial of the U.S. Constitution concluded its two-day meeting in Salt Lake City Friday, and Justice Burger said this session was spent mostly for the members to get acquainted with one another.

The commission was established by Congress with members appointed by President Reagan to develop ways to best promote and study the U.S. Constitution in commemoration of that document's 200th birthday in September, 1987.

"We just have two years [to develop the educational and promotional program] and we are trying move along as efficiently as possible," Justice Burger said during a news conference before departing the city Friday.

He said most meetings are being held in private to insure the discussions will be conducted as candidly as possible.

The 23 members of the commission come from the judiciary, Congress, academia and the private sector and are charged with developing a two-year program celebrating the Constitution.

Justice Burger said preliminary discussions have focused on sponsoring essay contests at the high school, college and law school levels and on educational television programs exploring the development and principles of the Constitution.

Sen. Orrin Hatch, R-Utah, who sponsored the legislation setting up the commission, said right now, the promotion is scheduled to run from 1987 to 1989, "but we're looking at having it run for four years until 1991 because that is how long it took for the Bill of Rights to be ratified."

Sen. Hatch said Congress must eventually determine how much to appropriate for the project and the commission will be going to the private sector for contributions as well.

Chief Justice Burger noted it was difficult to get under way without an established budget, although the new administrative director, native Utahn Marc Cannon, will receive an annual salary of \$86,200.

The initial budget for the commission was \$331,000, but Justice Burger noted the Bicentennial Commission of 1976 had a budget of \$100 million to develop the celebration of the nation's birthday.

Justice Burger said he is sure the constitutional celebration will spawn much healthy debate concerning the document which forms the basis for the U.S. government. But he said the main goal "is for all of us to know more about the Constitution than we now know."

"No people in all of history has been able to do in 200 years what this country has accomplished," Justice Burger said. "Much of the reason for that has to be the Constitution, which guaranteed the freedom for every person to develop according to the God-given talents afforded him."

The chief justice also noted the document is the "longest running constitution in the history of the world and most people believe the document is almost sacred if not indeed sacred."

Mr. Cannon noted many countries have attempted to copy the U.S. Constitution and he said "two-thirds plus of the constitutions in the world have been written since 1970."

PUBLIC CITIZEN LITIGATION GROUP

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2000 P STREET, N. W.

WASHINGTON, D. C. 20036

(202) 785-3704

HAND DELIVERED

September 23, 1985

Honorable Mark W. Cannon, Director
Commission on the Bicentennial of
the United States Constitution
United States Supreme Court
One First Street, NE
Washington, D.C. 20543

Dear Dr. Cannon:

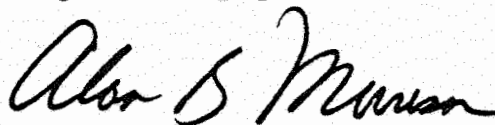
I am writing you on behalf of Public Citizen, a non-profit public interest organization headquartered in the District of Columbia, concerning the operations of the Commission on the Bicentennial of the United States Constitution (the "Commission"). I have reviewed the enabling legislation and familiarized myself with those activities of the Commission that have been made public to date. Based upon that review, I have reached the conclusion that the Commission is a Federal Advisory Committee, as defined in section 3(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I ("FACA"), because it was both established by statute and is being utilized by the President and/or one or more federal agencies in the interest of obtaining advice and/or recommendations. Therefore, it is required to comply with the dictates of FACA -- principally by opening its meetings to the public -- and to make its records generally available to the public under the Freedom of Information Act, 5 U.S.C. § 552 (the "FOIA").

Accordingly, on behalf of Public Citizen, I hereby request that the Commission immediately begin providing reasonable advance notice of its meetings, including publication in the Federal Register of the date of all its meetings, and that all future meetings of the Commission be open to the public, unless closing them is specifically authorized pursuant to section 10(d) of FACA. I also request, pursuant to the FOIA, that Public Citizen be provided access to copies of all documents furnished to Commission members or otherwise discussed in connection with the Commission's two previously closed meetings.

It is our understanding that the Commission's next scheduled meeting is in November, and that the Commission intends to close that meeting to the public. Accordingly, unless we are advised

by the close of business on October 8, 1985, that the November meeting of the Commission will be open to the public, we shall consider this request to be denied and shall proceed accordingly.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Alan B. Morrison".

Alan B. Morrison
Counsel to Public Citizen

ABM/sm

Commission on the Bicentennial of The United States Constitution

734 Jackson Place, N.W. • Washington, DC 20503
202/USA-1787

Warren E. Burger
Chairman

October 10, 1985

Frederick K. Biebel

Lindy Boggs

Herbert Brownell

Lynne V. Cheney

Philip M. Crane

William J. Green

Edward Victor Hill

Cornelia G. Kennedy

Edward M. Kennedy

Harry McKinley Lightsey, Jr.

William Lucas

Edward P. Morgan

Betty Southard Murphy

Thomas H. O'Connor

Phyllis Schlafly

Bernard H. Siegan

Ted Stevens

Obert C. Tanner

Strom Thurmond

Ronald H. Walker

Charles E. Wiggins

Charles Alan Wright

Mark W. Cannon

Staff Director

Ronald M. Mann

Deputy Staff Director

Mr. Alan B. Morrison
Counsel to Public Citizen
Public Citizen Litigation Group
2000 P Street, N.W.
Suite 700
Washington, D.C. 20036

Dear Mr. Morrison:

I have your letter of September 23, concerning the applicability of the Federal Advisory Committee Act (FACA) to the Commission on the Bicentennial of the United States Constitution. We are advised by counsel that the Act does not apply to the Bicentennial Commission. However, if you disagree, we will be glad to consider your position.

Our position is influenced by the common experience that free exploration and exchange of ideas, particularly by members of a commission of this kind, would be inhibited if all the meetings were open to the general public and media--where, in those situations, any part of any statement can be widely broadcast, and perhaps not in the context that was intended by the speaker. This is particularly true for a group whose members are just getting to know each other. Given the pressures of time on the volunteer, unpaid members of this body, our hope is to be able to cover our topics with uninhibited discussion. We hope that this will permit the Commission to move expeditiously, and to involve the public as widely as possible in a diversity of Bicentennial activities. All minutes, of course, will be made public as soon as they are prepared and minutes of past meetings are available on request.

I would note that, although not required by law in our view, one of the three meetings held by the Commission to date was open to the public. Moreover, we are contemplating having the Commission open other meetings whenever feasible, where we conclude it will advance the work of the Commission.

We very much appreciate your interest in the work of the Commission. The Commission is considering your request under the Freedom of Information Act and expects to have a response fairly soon.

Sincerely,

A handwritten signature in cursive script that reads "Mark Cannon".

Mark W. Cannon
Staff Director

The New York Times Magazine

September 22, 1985

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Cover: Illustration by Mark Steele.



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CONSTITUTION

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in the public education system, something that would offset the fact that we take for granted the system we've got."

"It's kind of a love fest for him," says Ronald H. Walker, a member of the Commission on the Bicentennial of the United States Constitution, the body charged with organizing a national celebration. "I think he would like to see a monument to the Constitution."

THIS SUMMER, PRESIDENT Reagan appointed Justice Burger to serve as chairman of the constitutional bicentennial commission. In doing so, he put an end to a tangled, four-year delay of planning the tribute. Now time is run-

ning short; the American Revolution Bicentennial had 10 years to gear up. Celebrating the Constitution may seem like a simple aim, but when what James Russell Lowell called "a machine that would go of itself" went to work on itself to plan a celebration, so did its system of checks and balances. At almost every turn, the Federal tribute to the system became caught in the system itself.

At the White House last Tuesday, Constitution Day, Justice Burger was scheduled to present the first report of the constitutional bicentennial commission to the President, after a summer's work. The report was almost two weeks ahead of the deadline set by law — a symbol of the Chief Justice's resolve to

bring the celebration's troubles to an end.

Actually, the Chief Justice has been thinking and talking about the bicentennial for years. One individual, long impressed with Justice Burger's commitment, remembers a comment going back to the 1970's. He quotes a Federal judge, who asked the Chief Justice how long he would remain on the Court. Justice Burger was said to have joked, "At least through the bicentennial."

The nation's top jurist began to work to advance the bicentennial eight years ago. In 1977, the Judicial Conference of the United States, the policy-making body for the Federal judiciary chaired by the Chief Justice, authorized him to appoint its bicentennial committee. In 1979, he accepted the honorary chairmanship of the advisory board of Project '87, a joint bicentennial program of the influential American Histori-

cal and American Political Science Associations.

Soon after that, in a speech at the National Archives, he gave a scholarly audience his view of the importance of the anniversary. The bicentennial is a chance to look at how the Constitution empowered the three governing branches, and "compare the functions as they have been performed in recent times with the functions contemplated in 1787 by the men at Philadelphia . . . and ask ourselves whether they are faithful to the spirit and the letter of the Constitution, or whether with some we have gone off on the wrong track." The exercise, he told the scholars, could "serve as a guide to correct whatever flaws we see and to plan for the years ahead."

THE CHIEF JUSTICE gave his interview during a brief vacation on a verdant former plantation that is now

a small community a few miles outside of Charlottesville, Va., not far from Thomas Jefferson's Monticello. The site had been convenient to a conference he had attended, and he stayed on, ensconced in a tiny stone cottage. More typical of his accommodations away from home is the 230-year-old Lightfoot House, a restored mansion in Colonial Williamsburg, where he usually stays while visiting there.

"The Chief," as everyone calls him, answered the door himself, wearing gray slacks and a long-sleeved blue plaid shirt. A squarely built man, but not heavy, he has a full mane of white hair and a strong face. His handshake is firm. His smile is a bit reserved. He looks much younger than his 78 years.

Justice Burger had been working at the dining room table, where some binders, note pads and folders were

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CONSTITUTION

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spread out — the only sign that the top judiciary official in the land had set up shop there. The cottage furniture was American, and unmatched. In the living room, the oval coffee table held a wrinkled copy of Southern Living magazine and a slim, hardback book entitled "Monticello." A tiny television set was just big enough to see the news.

Taking a side chair in the living room, Justice Burger rubbed his eyes as if he had been working on his papers a long time. But his voice was full of energy as he was off and running on his favorite subject, the Constitution, which he calls "the most utterly unique experiment in government in the history of the world."

The Chief Justice downplays his own efforts to advance the tribute to the experiment, but disclaimers and the cautious language he uses cannot conceal the intensity of his feelings for the Constitution. Its creation and the founding days are so vivid to him that he effortlessly sees them as scenes on television. If he has his way, they will, in fact, be on the air.

Justice Burger begins outlining a scenario for a show that would dramatize the Constitutional separation of powers. In 1793, there was a conflict among President Washington's advisers over the effect of the revolutionary peace treaty with England on America's neutrality in the war that had broken out between England and France.

"Washington and his Cabinet, with Thomas Jefferson as Secretary of State, decided that the meaning of the treaty was a technical legal question, and they would ask the Supreme Court for an opinion," Justice Burger says. "Jefferson was commissioned to write a letter to John Jay, the Chief Justice."

He pauses, conjuring up the past. "The next scene would be John Jay sitting with his five Associate Justices reading Jefferson's letter. . . . The question: Is this a case or a controversy in law or equity?"

It was decided that it was a political controversy, not one for the judiciary. "The net result was the Supreme Court wrote back to President Washington saying, 'We're very sorry, but we can't give

opinions about things like this.' " Justice Burger is on a roll.

"There is another one that would be a very dramatic 30-minute show, and that is the only case that John Marshall ever argued in the Supreme Court of the United States. This was when the Supreme Court was sitting in Philadelphia, and the room where this argument took place has been preserved."

John Marshall, he explains, who went on to become a Chief Justice, was then representing a group of Virginia debtors who claimed that, under Virginia law, they could pay off British creditors in state currency, contrary to the provisions of the peace treaty.

"I haven't looked at the case for 30 years or more, so I don't remember the details," Justice Burger says, "but Marshall had a losing case from the beginning. If a state law or an act of Congress is contrary to a treaty, it leads to the same result as its being contrary to the Constitution. This is something not generally understood."

He is quiet for a moment, then says that he has a half-dozen such episodes roughed out in a memorandum for a team of historians to prepare for television. A good national soaking in history to promote appreciation of the Constitution's genius is what Justice Burger is after.

WHILE THE CON-stitution is what Justice Burger calls an astonishing example of efficient lawmaking, drafted in only four months, creation of the bicentennial has been astonishing, too — as a masterpiece of pratfall and delay.

In September 1982, it was being guided by the Chairman of the Senate Subcommittee on the Constitution, Orrin G. Hatch, Republican of Utah. The Senator's struggle for a consensus among his colleagues on a bill to establish a bicentennial commission took a year. There were disagreements over funding, and duration of the commemorative period.

There was no argument on a point that would cause trouble later: that all three branches of government would be represented on the new commission. The bill was drawn so that the Chief Jus-

Justice would be a member — and thus, by tradition, chairman of the commission. Senator Hatch also put one leader each from the Senate and House of Representatives on the panel, and nine other members to be nominated by the Chief Justice, Senate and House. The President would appoint four members of his own choosing.

Ronald M. Mann, then an associate director for Presidential personnel, and an amateur historian, was the first to complain that the bill was lopsided against the executive branch. Mr. Mann had been meeting with Senator Hatch's subcommittee counsel, Randall R. Rader, and channelling his findings to his superiors in the White House.

To Mr. Mann, the "Presidential Commission" was Presidential in name only, but his objections were about to be moot. While the bill passed the Senate unanimously, it was stopped dead in the House. Robert Garcia, Democrat of New York and Chairman of the Subcommittee on Census and Population (which handles bills concerning commissions and boards), refused to hold hearings. Representative Garcia at that time was busy with results of the 1980 census, and had some concerns about the bill, including possible commercial exploitation of the constitutional birthday. He resisted every persuasive de-

vice Senator Hatch could employ — and, when the 97th Congress expired, so did the bill to establish a constitutional bicentennial commission.

REINTRODUCING THE bill in January 1983, Senator Hatch held hearings, and to help achieve its passage, summoned Gerald R. Ford, the first former Presidential to testify in a congressional hearing since Harry S. Truman in 1959. The Senate passed the bill once again, and it was moved on to Representative Garcia.

Now came the rustle of the robes of Chief Justice Burger. "He wrote us a letter urging us to limit the size of the commission," says Michael J. Ferrell, Representative Garcia's former subcommittee counsel. "We heard that he had already spoken to judges. A Federal judge in New York called Garcia and intimated that the Chief had mentioned to him that he might be one of his nominees."

Justice Burger answers this, saying, "I just have no recollection of any communications with Garcia. If I wrote him a letter, it was probably a fairly routine communication which we sometimes write to congressional committees." He has no special recall of talking to a New York judge; but adds, "I talk to Federal judges all the time."

Whether Representative

Garcia actually got a high-level nudge from the judiciary or only felt that way, he moved on the bill — although not without alterations to remedy the flaws that had made him hold up the bill in the first place. He clapped a ceiling on contributions and prohibited commercial use of the bicentennial logo.

But the deal was not yet done. No branch of government could resist putting its own final stamp on the most ceremonious establishment of a bipartisan celebration of the Constitution. In mid-May 1983, the White House finally objected to the imbalance that Mr. Mann had complained of months earlier.

"The President wanted to name eight rather than four members," says Senator Hatch. After further negotiation, he got the eight.

On Sept. 29, 1983, President Reagan signed the bill. But he also issued a statement. After saying that he welcomed the leaders of the other branches of government on the commission, the President stated that due to the doctrine of the separation of powers, "I understand that they will be able to participate only in ceremonial or advisory functions."

According to Theodore B. Olson, a former assistant attorney general who advised the White House on the bill, Congress was engaged in an all-too-familiar encroachment on executive branch appointment power, by writing into the law the membership of the Chief Justice and the Senate and House leaders. The Justice Department told the White House of the possible constitutional violations, and suggested that it would set a precedent to ignore them. The President's statement made it clear that they would not be ignored. The members from the other two branches were rendered virtually powerless in a stroke. They would not be allowed to vote on the commission's operational decisions, and the Chief Justice would not be chairman.

THE CHECK BY THE President was the beginning of 20 more months of delay for the birthday party. The White House was by that time besieged with candidates clamoring to be appointed to the commission. "I had a file this thick," Mr. Mann says, gesturing with his thumb and forefinger about four inches apart. The lists would grow until they contained nearly a thousand names.

The White House moved slowly. The controversial nature of the commission appointments led Capitol Hill watchers to surmise that the subject was too politically sensitive for any decisions to be made until after the 1984 election. Some speculate that the constitutional argument was a bureaucratic mousetrap that had sprung on the President, while others maintain that it masked a White House effort to dominate the commission.

The Chief Justice says it is his opinion that more immediate events caused the delay in naming a commission, "whether it was the first crisis in Lebanon, or the Bitburg Cemetery, or Nicaragua, or San Salvador or whatever."

Then, in January, one mysterious appointment was made. Former Senator Roger Jepsen of Iowa, a staunch Reagan loyalist defeated in a messy re-election campaign, was asked to serve as staff director for the commission that did not yet exist.

"I was to serve as acting executive director of the commission because it was so far behind schedule," Mr. Jepsen says. "It was so they could hit the ground running."

A townhouse, with no telephone, but only a few blocks from the White House, was assigned to him, and Mr. Jepsen happily plunged into budgets and programs and fund-raising ideas. A spattering of nasty publicity broke. Mr. Jepsen was called "unqualified" for the job, and as it turned out, he had to hit the ground running.

It is a political axiom that embarrassments are best handled when no one is looking. On June 25, at the height of the TWA hostage crisis, a press release appeared among the White House handouts announcing the President's intended appointees to the commission, and designating the Chief Justice as chairman.

After all the excitement among would-be commissioners about the competition for spots on the commission, the roster, in fact, was quite modest. The President's appointees included only one nationally known name, Phyllis Schlafly, and one renowned Constitutional scholar, Charles Alan Wright, a law professor who had served as a legal consultant to former President Nixon in the Watergate tapes case.

For the swearing in at the White House, no life-giving East Room reception or orchestrated tribute before a

battery of cameras was offered the commission, but Justice Burger and his administrative assistant, Dr. Mark W. Cannon, had already planned for inspiration and morale-boosting at the first meeting.

They had been offered an original bicentennial song, "Freedom Ain't Free," composed by Wendell Wilkie Gunn, a former Reagan assistant for international trade and a financial consultant. At a luncheon under the crystal chandeliers in the Supreme Court conference room, Mr. Gunn displayed a logo he had designed with his 15-year-old son, and picked up his guitar to sing his tune with the portraits of early Chief Justices gazing down.

The commissioners had wanted the jobs and they were full of enthusiasm. Ted Stevens, Alaska's Republican Senator, believes the commission has the makings of a magical coalition (as Allen Weinstein, a Boston University historian, terms the 1787 Constitutional Convention). Says Senator Stevens, "We have some Patrick Henrys [bombastic] and a couple of Rhode Islanders [anti-everything], but we immediately buried any partisan differences."

Justice Burger had arranged for Senator John W. Warner, Republican of Virginia, to tell the commission about the 1976 bicentennial of the Revolution, which had received some \$118 million in taxpayer money and contributions, and involved 14,000 communities across the country. It sobered, but did not deflate them. They voted to go back to Congress to have the contributions ceiling lifted and to get permission to sell medals and stamps and license the logo. They appointed Mr. Mann deputy director, and voted to ask Congress to fund a staff larger than the five allotted them. They agreed to support legislation making Sept. 17, 1987 a one-time national holiday; and adjourned the first day of the first meeting.

Senator Edward M. Kennedy, Democrat of Massachusetts, appointed from the Senate list, surprised his fellow commissioners by staying most of the second day, with the Senate in session a few blocks away. He proved so interested in his new assignment that, during the Senate's August recess, he invited four constitutional history and law experts — from Harvard, Brown, Johns Hopkins and Suffolk Universities — for an evening at Hyannis

to discuss it. When this is mentioned, Justice Burger's careful smile lights his eyes; he looks delighted. Instantly, he gives credit where it is due. "All of the members of the commission, particularly at the second meeting, had a great deal to do with making contributions of ideas. But particularly Senator Kennedy, and . . ." he adds with a sidelong glance, "Senator Orrin Hatch and [Representative] Lindy Boggs, who is the surrogate for Speaker [Thomas P.] O'Neill."

It was decided that the only man who could handle the job of staff director was the one already steeped in it: Justice Burger's assistant, Dr. Cannon. Meanwhile, the Chief Justice has gone on with his personal plans for the bicentennial, using a multiple-front attack worthy of a Presidential candidate targeting every last vote.

"For about six months, I've had a great big looseleaf notebook," he says with a wave toward the dining room table, "and the label on the outside is simply one word, 'Ideas'."

To appeal to young schoolchildren, Justice Burger tracked down Betty Debnam, the author of a favorite children's Sunday news feature, and invited her to the Supreme Court, where he asked for her help. "She was very agreeable," he says with pride.

"The next level will be — and that is what my travels this summer have been about — a contest or series of essay contests in the high schools."

The Chief Justice is concerned about some projects peaking too early. "That's another thing we have to watch," he says. "The public tends to get a little bored easily, and if we stay with some subject too long, by '87 they might lose interest. This is something we'll get expert counsel about."

Reaching the public generally is a job for the media, "the great educator," Justice Burger says. He is also eager for the help of corporate sponsors. "Any company in the Fortune 500 is a candidate to help," he says. "I've had discussions with the executives of several of those companies where I have an acquaintance on a personal basis. I'm sure they're going to be cooperative."

Making new films like ones the Court made for the 1976 celebration and the National Geographic's series from that time, is another of Justice Burger's projects. "This has already been discussed with National Geographic, because I have the advantage of being a trustee, and at the Smithsonian Institution."

For last Tuesday's presentation at the White House, the commission invited various other organizations to begin coordinating plans for the celebration, and found that the birthday eagle was gathering momentum on its own. ABC is planning a mini-series. Another promising project is a series to be distributed by National Radio Theater, in which the daily developments at the original Constitutional Convention are reported as if from an anchor booth above the convention floor, complete with roving reporters. That has been co-scripted by Dr. Jack N. Raccove, a historian, and Dr. William B. Allen, a political scientist.

Possibly the biggest private operation is Project '87, which has raised more than \$2 million and is far along in developing instructional materials, both in print and for television, a poster series and a quarterly magazine. A blockbuster in sheer scale is the effort of the National Endowment for the Humanities, which has funded some 150 bicentennial projects for a

total of more than \$10 million since 1981.

Frank G. Burke, acting Archivist of the United States, may have the best line of anyone involved: "Asking the Archives what it is going to do for the bicentennial is like asking the Pope what he is going to do for Christmas." The Archives has custody of the Constitution.

HAVING NOW BEGUN, Justice Burger's commission has reason for hope. The Chief Justice is counting on history, and working against indifference. "Basically" he says, "Americans for 200 years have been looking forward. The American mind should be looking back and ahead at the same time."

The Chief Justice has been answering questions for two-and-a-half hours. It is time for him to get back to work. But first, he walks over to the window seat with a beckoning gesture. On the cushion rest two small sculptures, one just drying from a new coat of bronze paint. It is a replica of the head of Dante.

"I made it 40 years ago," Justice Burger says. "It was ready to be redone."

Beside it is a clay bas-relief of the head of John Marshall. With a look of concentration, Justice Burger runs his finger around the profile; the clay is still wet. "I haven't got the mouth just right yet," he says. He will make a plaster of Paris mold from the clay model and then have the final plaque poured in bronze.

Leaving the cottage, it is impossible to miss the Chief Justice's black limousine, almost filling the narrow winding road. When asked why the car has license plate number "10," the driver's answer is a snapshot of democracy: "One through nine belong to Washington's mayor and other city officials."

One last thing: When told that the commission was going back to Congress with proposals to lift the contributions ceiling and license the logo for fund raising, Representative Garcia drew in his breath.

"It will have to come before me; I have a real problem with that," he said. Then he added, "We've had the quincentennial and I wrote into that a cap of \$50,000."

The what?
"The quincentennial," Mr. Garcia said patiently. "You know, 500 years since the landing of Columbus. We set up a commission."

Right. ■



The bicentennial commission is sworn in by Vice President Bush.

NATIONAL Forum

THE PHI KAPPA PHI
JOURNAL

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1984

TOWARD THE BICENTENNIAL OF THE CONSTITUTION

GUEST EDITED BY MARK W. CANNON ★ WITH WILLIAM J. BENNETT ★ WALTER BERNIS ★ ALBERT P. BLAUSTEIN ★ WARREN E. BURGER ★ ORRIN G. HATCH ★ RITA E. HAUSER ★ A. E. DICK HOWARD ★ TOM JOHNSON ★ DAVID MATHEWS ★ WADE H. McCREE, Jr. ★ RICHARD B. MORRIS ★ BETTY SOUTHARD MURPHY ★ THOMAS P. O'NEILL, Jr. ★ DON K. PRICE ★ RONALD W. REAGAN ★ GORDON S. WOOD ★ ★ ★ ★ ★ ★ ★ ★

COSPONSORED BY THE AMERICAN BAR ASSOCIATION

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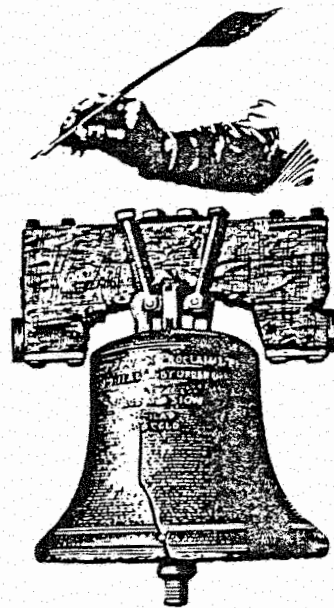
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Why Celebrate the Constitution?

Mark W. Cannon



“Why celebrate the Constitution?” Why celebrate a yellowed, 200-year-old piece of parchment with faded print? Why bother? We should bother because we cannot afford to let the Constitution become confined to that category of “our hallowed past.” We should celebrate the Constitution not only for its role in American history, but for its significance to modern government, its pivotal place in the American psyche, and its role in the continuation of our personal freedom. Now is the time to realize the Constitution’s great impact upon our individual and collective lives.

Few things endure 200 years. No other constitution has lasted so long. A comparison of the longevity of the American Constitution with that of the constitutions of other countries provides some basis for our appreciation. Nearly two-thirds of the world’s 160 national constitutions have been adopted or revised since 1970, and only 14 predate World War II. It has been calculated that 53.5 percent of the independent states of the world have been under more than one constitution since the Second World War. The average nation has had two constitutions since 1945, and two states, Syria and Thailand, have each had nine constitutions over the past forty years! These figures dramatically illustrate the precarious existence of a constitution. By these standards, the Constitution of the United States has proven remarkably durable.

Perhaps one reason for its continuing importance in our lives is that the Constitution is a revolutionary work. Drawing upon the lessons of history and their understanding of human nature, the Founders crafted a bold, masterful document. Thomas Jefferson wrote: “We can no longer say there is nothing new under the sun. For this whole chapter of the history of man is new.” We often pay tribute to “firsts” in this country—to breakthroughs in science, in sports, in space technology and exploration, and in the arts. Our Bicentennial is an occasion for celebrating our Constitution as a breakthrough in creating an energetic government that would be restrained from using its powers to subjugate the citizens.

The new nation was understood by its architects as unique primarily because of its dedication to the universal principles of justice announced in the Declaration of Independence. To fulfill the lofty demands of those principles, the Founding Fathers enshrined republican self-government as the quintessentially American form of government, and they did so upon what they consid-

ered to be the only sound basis for such a government—a written constitution. Chief Justice John Marshall did not hesitate to speak for all Americans when, in *Marbury v. Madison*, he referred to a written constitution as “the greatest improvement on political institutions.” In more recent times, Max Lerner, author of *America As a Civilization*, has attributed much of the success of the document to “word-magic”—a reverence for things written. The Constitution is a tangible and visible symbol of the things that people hold dear. Moreover, the document reminds us that our government is one of law, not of men. By having a written document, the law seems less mutable, less vulnerable to the whims of individuals. The Constitution thus symbolizes the idea of the rule of law.

Having representatives of the people put words to parchment was a new concept in constitutional development; but having a written constitution does not in itself guarantee acceptance. Ratification by the people of the states gave the Constitution legitimacy—a major reason for its long life. It has cultivated what Justice Samuel Miller described as an “inborn and native regard for the law” among Americans. This respect for law stems from the awareness that the Constitution, and the government under law established by it, were created by the people to secure their safety and happiness. The

MARK W. CANNON has served as the administrative assistant to the chief justice of the United States for the past twelve years. Formerly the director of the Institute of Public Administration in New York and chairman of the department of political science at Brigham Young University, he has worked in the House of Representatives and the Senate. Mr. Cannon has published widely and has coauthored The Makers of Public Policy: American Power Groups and Their Ideologies and the upcoming Views from the Bench: The Judiciary and Constitutional Politics (Chatham House, 1984).

democratic ratification process of 1787-88 and the provision for popular amendment testify that the authority and legitimacy of our Constitutional order derive from "We the People." American support for law also derives from what jurist Lon Fuller refers to as an "inner morality" in the law. By learning to observe rules for public life that are promulgated (not secret), that are prospective (not *ex post facto*), that are consistent, and that apply to everyone (not just a select group), Americans generally have come to expect that laws will conform to these safeguards.

Plato argued that a polity should have a myth surrounding its founding, an inheritance that could be passed to future generations to unite them behind a way of life. The virtually miraculous creation and adoption of the Constitution blend with legend to be part of the cultural inheritance and inspiration passed on to each new generation of Americans. Because of the legitimacy of the Constitution and the perpetuation of this legitimacy, disagreement has almost always occurred within the American political system, not about that system. In celebrating the Constitution, we celebrate our rich history and the ideals that have allowed us to flourish as a people.

The most tragic exception to the extraordinary moderation of American politics was the Civil War—a struggle for the soul of the American political order. It required the genius of Abraham Lincoln to convince friends of democracy of the irreconcilable contradiction between human slavery and American principles of self-government. The Framers of the Constitution would no doubt have regarded Lincoln's leadership of the Union as a providential event in world history, for it rescued their work from the opprobrium of slavery by emphasizing the primacy of freedom for all.

What is particularly remarkable about our Constitution is that its words have meaning. As William G. Andrews writes in *Constitutions and Constitutionalism*:

Many regimes in the world today have constitutions without constitutionalism. Tyrants, whether individual or collective, find that constitutions are convenient screens behind which they can dissimulate their despotism Provisions that seem to be restraints can be employed to rationalize the arbitrary use of power.

Some of the most repressive totalitarian regimes have had showcase constitutions that failed to protect the people.

In contrast to the preponderance of constitutions around the world, the American Constitution does have meaning and continues to govern the political life of our nation. The ultimate source of governing authority in the United States—the American people—remains attached to the Constitution as the "supreme Law of the Land," and to the principles of equality before the law which inform the language of that Constitution. The Bicentennial celebration is not only a time to salute the designers of "the granddaddy of constitutions," but also a time to appreciate that we and our forebears have remained faithful to our constitutional heritage through changing times, needs, and circumstances.

Why celebrate the Constitution? It was a remarkable success. On the occasion of the Centennial of the

Constitution, the Englishman William Gladstone wrote: "I have always regarded that Constitution as the most remarkable work known to me in modern times to have been produced by the human intellect, at a single stroke (so to speak), in its application to political affairs." His words ring true 100 years later.

The Constitution is certainly worthy of praise and salute. Why *celebrate* it, though? Celebration is one way to get people enthusiastic about and in touch with our heritage. It unites the country, and it inspires interest and pride. In 1976, despite preoccupation with societal malaise, the celebration of the Bicentennial of the Declaration of Independence nevertheless stimulated over 5000 programs and festivities.

These projects did more than focus upon the Declaration of Independence; they celebrated American life. Indeed, very few projects in 1976 were intended primarily to "educate." But the end result was, in varying degrees, education—not only of schoolchildren, but of all Americans. However successful the Declaration Bicentennial was, several things can and should be done differently from 1987 to 1989. The Constitution Bicentennial celebration should be more than tall ships and medallions. It should be a "cerebration" with greater emphasis on civic education.

R. Freeman Butts, the William F. Russell Professor Emeritus at Columbia University, is a prominent advocate of civic education in the Bicentennial era. He believes that "the fundamental ideas and values upon which our Constitutional order is built should be the core of sustained and explicit study . . . carried on throughout the school years from kindergarten through high school." Butts is part of a great tradition of Americans concerned about education of the citizen. "If we think them not enlightened enough to exercise a wholesome discretion," wrote Thomas Jefferson, "the remedy is not to take it from them, but to inform their discretion by education."

Today, many Americans are appallingly ignorant of the workings of law and government. They are unfamiliar with the Constitution and the rights, duties, and powers it confers. To be sure, it is easy to lose interest in a 200-year-old document. Yet, "informing popular discretion" is as important now as ever. Mark H. Curtis, President of the Association of American Colleges, has made a most imaginative proposal:

Though we are only inheritors of the Constitution and not makers of it, the continuation of orderly government under the Constitution requires not only our tacit assent but also our active participation in accepting the duties as well as the rights which we derive from it. If it were possible, it could be more than symbolic to have all persons upon reaching voting age sign a document of ratification to signify that they understand the principles of the Constitution and accept the rights and responsibilities it bestows upon them.

Although this idea may not be completely feasible, it does conceptualize a solution. By making the Constitution more immediate in our lives, we can prevent it from becoming "ancient history." This Bicentennial offers an opportunity to bring the Constitution into our contemporary understanding, which is perhaps the most

continued on page 13

temporary capital and a major commercial center, was not lost on either side. In this case, the victory of the Federalists was a tribute to leadership and the art of persuasion in overcoming great odds. That informed leadership was provided by Alexander Hamilton and John Jay.

After the ratification of the Constitution, the Federalists set out to address some of the concerns of the Anti-Federalists. At the very first session of Congress, Madison turned his attention to drafting a bill of rights and quickly enough to avoid the necessity of a second convention. Madison used the alternative amendment procedure provided by the Constitution, which required a two-thirds vote in both the House and the Senate and ratification by three-quarters of the states. This cumbersome but prudent procedure worked. More than 200 amendments had been proposed in the state ratifying conventions, but the Senate and House in conference reduced that number drastically. In 1791, Madison was gratified to learn that the first ten amendments to the Constitution had been ratified. In the main, these amendments guaranteed personal liberties, but the

Anti-Federalist reaffirmed the reservation of rights to the states and the people—in effect a guarantee of federalism. Of all Madison's achievements, the Bill of Rights remains his noblest heritage to the Nation.

The Bill of Rights is also a tribute to the conscience of the Anti-Federalists, to their concern lest a leviathan state be created that would crush personal liberties and negate the authority of the separate states. The Civil War, which settled for all time the supremacy of the Union, by no means eliminated Anti-Federalist criticism. Many of the arguments that had been raised in the struggle over ratification contributed to moving the Nation in a more democratic and egalitarian direction than may have been contemplated by the Founding Fathers at Philadelphia. An integral part of American constitutional thought is the Anti-Federalist concern for that delicate balance which the Constitution maintains between the preservation of individual freedom and equal rights on the one side and the maintenance on the other of a durable federal republic, capable of providing security, imbued with energy, and controlled under a unique system of checks and balances and separation of powers. **NF**

CANNON—continued from page 4

important reason we should celebrate the Constitution.

This special issue illuminates the Constitution and the 200-year history of "the Great Experiment." The authors gathered in this volume are among the most respected men and women in their fields. Hailing from government, private enterprise, and academia, they offer not merely histories, but fresh perspectives and diverse insights on their respective topics.

These articles will help people understand the United States Constitution and those elements of it that have undergirded pervasive freedom and creativity in the arts; in science, invention, and technology; in speech, press, and religion; in enterprise; and in methods of helping each other. The articles emphasize the need for civic education, wisdom, and virtue; for the willingness

to sacrifice immediate personal gain for greater long-term personal and societal benefit; for commitment to our constitutional system of ordered liberty which must at times assume heroic proportions; for the ingenuity to solve complicated new problems, as we have done so many times in the past. These qualities will sustain the cornucopia of benefits engendered by the personal creativity and vitality encouraged by our constitutional system.

As we approach our third century, this is an appropriate historical moment for national reflection on two questions: What is important to conserve from our constitutional heritage? and What courses must we chart to reach new heights of a free, creative, problem-solving, enterprising America? **NF**

WOOD—continued from page 8

men on both sides of the Atlantic prided themselves on that reputation. The colonists began the Revolution in defense of their English liberties. Liberty was an English obsession before it was an American one.

As much as Americans developed and expanded their individual rights and freedoms in the late eighteenth century and after, they always began from the elevated base of English constitutionalism—a more liberal base than any in the world. Thus if America seemed to have a hundred religious sects and consequently moved to separate church from state, England had at least thirty of them and a degree of religious toleration that stunned continental observers like Voltaire. If Americans admitted truth as a defense in questions of a free press, England, unlike France, at least had no prior censorship of what was published. If Americans broadened the suffrage and political representation to an unprecedented extent, the English had a representative Parliament that went back more than half a millennium. If American judges in the late eighteenth century drew distinctions between statute law and the fundamental law of

the Constitution, had not Chief Justice Edward Coke in the seventeenth century construed and set aside portions of acts of Parliament in order to do justice? Whatever Americans did to extend liberty and protect individual rights from the encroachments of governmental power, the English had done it first: trial by jury, writs of *habeas corpus*, concern for property rights, fear of standing armies, bills of rights—all were English before they were American. Without the influence of the English constitutional and legal tradition, it is inconceivable that Americans in 1787 or later would have believed and acted as they did.

Yet ultimately, of course, the American political and legal system is not the English system, and this difference should make us aware that looking for intellectual origins and tracing intellectual influences are only part of the explanation of how we have come to be what we are. More important perhaps is what Americans have done with these inherited ideas, how they have used, expanded, and reshaped their intellectual legacies to fit the dynamics of their changing experience. **NF**

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC CITIZEN,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 85-3233
)	(Judge Oberdorfer)
COMMISSION ON THE BICENTENNIAL)	
OF THE UNITED STATES CONSTITUTION,)	
)	
Defendant.)	

CERTIFICATE OF SERVICE

I, Patti Goldman, hereby certify that I have caused a copy of plaintiff's Motion for A Preliminary Injunction, the Memorandum in Support of Plaintiff's Motion for a Preliminary Injunction, the Affidavit of Alan B. Morrison with attached exhibits, and a proposed Order to be served by hand delivery on this 23rd day of October, 1985 upon:

Gena E. Cadieux
Charles Sorenson
Thomas Millet
U.S. Department of Justice
Civil Division Room 3326
10th & Pennsylvania Avenues, N.W.
Washington D.C. 20530

Patti Goldman
Patti Goldman

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC CITIZEN,)
)
 Plaintiff,)
)
 v.) Civil Action No. 85-3233
) (Judge Oberdorfer)
)
 COMMISSION ON THE BICENTENNIAL)
 OF THE UNITED STATES CONSTITUTION,)
)
 Defendant.)

PLAINTIFF'S MOTION FOR LEAVE
FOR COUNSEL TO APPEAR PRO HAC VICE

Plaintiff hereby moves, pursuant to Rule 1-4(a)(2) of the Rules of this Court, for leave to allow plaintiff's lead counsel, Patti Goldman, Esquire, to appear before this Court pro hac vice and present argument on behalf of plaintiff, in the event that argument in this case is required. Ms. Goldman, a 1983 graduate of the University of Wisconsin Law School, and a member of the Wisconsin Bar, has recently joined Public Citizen Litigation Group as a staff attorney, and is now taking steps to become a member of the Bar of the District of Columbia. Until Ms. Goldman is admitted to the District of Columbia Bar, however, she is not able to join the Bar of this Court, and under Local Rule 1-4(a)(2), Ms. Goldman is not permitted to be heard by this Court unless she secures the Court's permission. Accordingly, we urge that the Court grant Ms. Goldman leave to appear in this matter pro hac vice, and present argument to the Court on this matter, if the Court deems that argument is appropriate.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC CITIZEN,)
)
 Plaintiff,)
)
 v.) Civil Action No. 85-3233
) (Judge Oberdorfer)
 COMMISSION ON THE BICENTENNIAL)
 OF THE UNITED STATES CONSTITUTION,)
)
 Defendant.)

ORDER


Upon consideration of plaintiff's motion for leave for its lead counsel, Ms. Patti Goldman, to appear pro hac vice in this action and to present argument to the Court on the plaintiff's behalf, the memorandum submitted in support thereof and the entire record herein, it is this ____ day of _____ 1985 hereby

ORDERED that plaintiff's motion is granted; and it is further

ORDERED that pursuant to Rule 1-4(a)(2) of the Rules of this Court, Ms. Goldman is hereby granted leave to appear before the Court and present argument on behalf of plaintiff on any matter related to this proceeding.

UNITED STATES DISTRICT JUDGE

Respectfully submitted,


David C. Vladeck
Alan B. Morrison

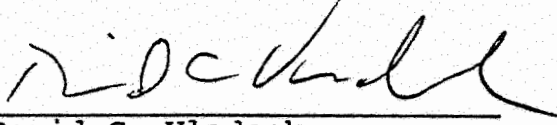
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(202) 785-3704

Attorneys for Plaintiff

October 23, 1985

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing and the accompanying proposed order have been served by hand on Gena E. Cadieux, Charles Sorenson, Thomas Millet, Department of Justice, Civil Division, Room 3325, Washington, D.C. 20530, this 23rd day of October, 1985.


David C. Vladeck