

The Documentary History of the Supreme Court of the United States, 1789-1800

Volume Two

THE JUSTICES ON CIRCUIT, 1790-1794



Maeva Marcus

Editor

The Documentary History of
the Supreme Court of
the United States, 1789–1800

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The Justices on Circuit
1790–1794

With a Foreword by William H. Rehnquist
Chief Justice of the United States

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Foreword

William H. Rehnquist

Chief Justice of the United States

The publication of Volumes 2 and 3 of *The Documentary History of the Supreme Court of the United States, 1789-1800*, is an event that legal historians and others interested in the early years of the Supreme Court will undoubtedly greet with justified anticipation. While the celebration of the bicentennial of our nation's Constitution has prompted a surge of curiosity about this period, it has also served to remind us that little is known about the beginnings of the federal judiciary. Few secondary works have been devoted to the Court's formative years, despite the obvious significance of these years in shaping the development of the judicial system. In this volume the Supreme Court and the Supreme Court Historical Society, supported by the National Historical Publications and Records Commission, have given scholars their first opportunity to delve deeply into one of the most intriguing and least studied aspects of the early Court: the extensive and often arduous circuit-riding duties of the justices.

Few lawyers and law students are aware that the Judiciary Act of 1789 created circuit courts but no circuit judges. Circuit court panels were composed of the federal district judge and two Supreme Court justices, who frequently had to travel long distances over inadequate roads in order to appear. The difficulty of fulfilling these duties gave rise to entreaties to alter the system and to some internal conflict among the justices themselves. Despite these complaints, the justices valiantly continued their rounds and in their capacity as circuit judges heard a number of significant cases, some of which eventually came before them again at the Supreme Court. The documents assembled in this volume and the subsequent one provide us not only with a vivid picture of the justices' lives on the road, but also with insights into the role of the circuit courts in the early history of the Republic. The justices' often lengthy charges to circuit court grand juries, along with the presentments and other responses of those juries, give us some fascinating glimpses both into the workings of the lower courts and into the relationship between the judicial system and the larger society.

The approach of the 200th birthday of the Supreme Court is a particularly

appropriate time to look back and discover new details about its infancy. Thanks to the efforts of the Documentary History project and those who have supported it, our understanding of the Court's early years continues to grow.

Acknowledgments

In completing the second volume of *The Documentary History of the Supreme Court of the United States, 1789-1800*, the editors find themselves once again indebted to many individuals and institutions whose assistance was crucial to the publication of this work. It is our pleasurable task to express our gratitude. Foremost among the institutions that have sustained us is the Supreme Court of the United States. The support of Chief Justice William H. Rehnquist and his colleagues and the continued encouragement of retired Chief Justice Warren E. Burger have been essential to the success of this project. Second only to the Court, the National Historical Publications and Records Commission, since the inception of our project, has supplied the funding that keeps us in business from year to year. Members of the staff of the Commission, in particular Sara Jackson, Roger Bruns, and Mary Giunta, give expert guidance on a variety of matters, and we wish to thank them especially. As always, the Supreme Court Historical Society has provided the administrative support that is so important to the well-being of a project like ours. David Pride and Kathy Shurtleff deserve our appreciation.

Financial assistance came from other organizations as well. We are deeply indebted to The William Nelson Cromwell Foundation for its consistent and generous support. Through the efforts of our consortium, Foundations of the American Constitutional System, Inc., the John M. Olin Foundation and the AT&T Foundation contributed much-needed funding to our project. We greatly appreciate the hard work of John H. Pickering and Whitney North Seymour, Jr., as officers of the consortium. Over the years the law firm of Wilmer, Cutler & Pickering has provided additional invaluable aid that has helped to sustain our research efforts.

Although his name does not appear on the title page, Professor James Oldham, our consulting editor, shared his knowledge of English law and legal history with us and offered us much valuable advice. Without his efforts, annotation of this volume would have been far more difficult. We look forward to a long and productive collaboration with him on future volumes.

We also take this opportunity to express our appreciation to two people, Jamil Zainaldin and Elliott Ashkenazi, whom we neglected to thank in the acknowledgments to volume 1. This was an oversight for which we are very sorry. Professor Zainaldin, we hope, knows how grateful we were for his contribution to that volume. Elliott Ashkenazi joined our staff as an associate

editor just in time to help us put the finishing touches on volume 1. The fruits of his work during the year that he stayed with us will appear in volume 4.

In this volume, as in the previous one, the editors continue to rely on the wisdom and expertise of our editorial advisory committee and its willingness to help. Kathryn Preyer, especially, contributes more to the project than any editor could expect. She is a scholar of great intellectual acumen and curiosity who provides us with the kind of stimulation that makes our work seem worthwhile.

Also helping to insure an improved volume are a number of individuals who have assisted us with knotty research problems: George Stevenson (North Carolina State Archives), Stanley P. Tozeski (National Archives—Boston Branch), F. Garner Ranney (Historiographer of the Diocese of Maryland), Louise C. Crouse (Charles County Public Library), Linda Eure (James Iredell House, Edenton, North Carolina), Kenneth M. McFarland (Site Manager, Stagville, North Carolina), Elinor Hearn (Archives of the Episcopal Church), Jane MacWilliams and Sarah Jane Rose (Legislative History Project, Maryland Hall of Records), Frank Halperin (Free Library of Philadelphia), Linda Stanley (Historical Society of Pennsylvania), Laetitia Yeandle and Giles E. Dawson (Folger Shakespeare Library, Washington, D.C.), Harry Hollingsworth (Inglewood, California), Denise Iredell (London, England), Michael E. Stevens (South Carolina Department of Archives and History), and John J. McCusker (University of Maryland). We appreciate their efforts in our behalf.

The staffs of a number of editorial projects continue to be very helpful to us. Charlene Bickford (Documentary History of the First Federal Congress), John Kaminski (The Documentary History of the Ratification of the Constitution), and Dorothy Twohig (Papers of George Washington) especially deserve to be recognized.

Ene Sirvet of the Papers of John Jay continually shares with us her immense knowledge of the Jay family and the Jay manuscripts. Over the years she has solved many an annotation problem for us. Her enthusiasm for her work is an example for us all.

The aid of repositories holding documents and illustrations remains indispensable to the success of our project. We would like to thank the Virginia State Library for the indefinite microfilm loan of the Virginia circuit court records. Edward J. Nygren, formerly of the Corcoran Gallery of Art, and Bradford L. Rauschenberg of the Museum of Early Southern Decorative Arts provided important assistance in locating eighteenth century landscapes. We owe a special debt to Edward C. Carter II of the Papers of Benjamin Henry Latrobe and to Stiles Colwill and Jeff Goldman of the Maryland Historical Society for enabling us to publish so many of the fine sketches of Benjamin Henry Latrobe. Dick Lankford, Jr., of the North Carolina State Archives, Joyce Botelho of the the Rhode Island Historical Society, and Angela Mack of the

Gibbes Art Gallery, Charleston, South Carolina also helped us greatly by providing photographs and responding to our numerous requests for more information.

Between the publication of volume 1 and volume 2, interns aided the project for varying amounts of time. We greatly benefited from the contributions of the following individuals: Amanda Berlowe, Charles Brown, David Eisenberg, Anne Joseph, Tom Loder, Robert Mann, Cherie Morris, Mark Morton, Lonnie Neubauer, Troy Rivetti, Robert Teir, and Robert Wydra.

Paul Whit Cobb, who began as an intern with our project one summer, continued to work with us for two additional summers and for much time in-between. Ever willing to do all kinds of research, he made himself indispensable to us.

Finally, we would like to recognize Kate Wittenberg and Leslie Bialler for making everything run smoothly at Columbia University Press and Stephen Humphry at The Maple-Vail Book Manufacturing Group for helping to solve our typesetting problems.

Guide to Editorial Method

In producing volumes 2 and 3 of *The Documentary History of the Supreme Court of the United States, 1789-1800*, the editors have followed the "Guide to Editorial Method" used in volume 1. The editors have, however, made a few adjustments in that method, described below under the same headings used in the first volume. An additional heading has been provided to describe the particular organization of volumes 2 and 3.

Organization of Volumes 2 and 3

The documents published in volumes 2 and 3 consist of private and official correspondence, grand jury charges and replies, newspaper reports, and diary entries made by Chief Justice John Jay and Associate Justice William Cushing. Each document is presented in chronological order. The editors provide a short introduction at the beginning of each calendar year. The documents are also interspersed with opening notices for the meetings of the circuit courts; each opening notice is placed according to the date when each court was required by law to convene. These notices give the opening and closing dates of the court, the Supreme Court justices and United States district court judges present, whether a charge was delivered, and whether a copy of the charge exists (for a table of the dates of holding court and which judges attended, see Appendix D). As the focus of these volumes is on the justices of the Supreme Court and not on the operation of the circuit courts, we do not note grand and petit jury rolls and attorney admissions. We include a short biography of each United States district judge, because of his role in the circuit court system, in the notice marking his first appearance at a circuit court. At the end of volume 3 there is a separate section on legislation relating to the details of holding the circuit courts.

Selecting Documents for Publication

Except for grand jury charges, subsequent reprintings of newspaper articles and/or variations in printings are not noted. Grand jury presentments were

selected from circuit court minutes and newspapers. We did not search the criminal case files of the circuit courts for presentments.

Dating Manuscript Grand Jury Charges

Manuscript charges present a particular dating problem. Because the charges were written in advance of their delivery and, unlike correspondence, have no dateline, we have chosen to date them on the day the justices first delivered them to a grand jury. Specific information for the dating of each charge can be found in its source note.

Annotating Documents

The circuit court system of the 1790s resulted in the justices going to places they had never been to before, meeting new friends, and renewing old acquaintances. As these people and places form the narrative of their letters to wives, friends, and relatives, we try to provide date of birth, date of death, occupation, and, where appropriate, any other important information identifying persons mentioned in the documents.

Of special significance to these volumes are the sources cited by the justices in writing their grand jury charges. Because it is impossible to ascertain which edition of a given source a justice used, annotations to the charges describe the edition we used for citation verification and note those few instances where the volume and page numbers did not coincide with those provided by the justices. In addition to cited sources in the original document, quoted passages for which the justices gave no source are identified wherever possible. The editors wish to acknowledge particularly the helpfulness of Robert G. McCloskey's edition of *The Works of James Wilson*, 2 vols. (Cambridge: Harvard University Press, Belknap Press, 1967), in identifying the abbreviated notations used by James Wilson in his charges.

Cases before the circuit courts mentioned in unofficial and official correspondence and which do not eventually come before the Supreme Court are identified to the extent that the editors have been able to obtain records from repositories.

When the justices quote laws of the United States we do not note minor differences between their quotation and the text of the act printed in the *Statutes at Large*.

Guide to Editorial Apparatus

Descriptive Symbols for Documents

The following table includes the symbols used to describe the documents available for publication and citation. When more than one version of a document exists, preference for publication is given in descending order according to this table. Thus, we publish a recipient's copy of a document in preference to a draft. In the source note, all versions are listed, the first being the one we are publishing.

- R Recipient's copy of a letter or other document. We determine whether a letter or document is a recipient's copy by any indication of endorsements, the presence of an address cover, or the collection in which it was found. If the letter or document is identifiably a duplicate, triplicate, presscopy, or polygraph copy made and sent to offset possible loss of the original, then we mention that fact in the source note; but the letter or document is still considered a recipient's copy.
- D Document. When used to describe commissions and other official documents, this symbol indicates that we cannot identify whether the document is a recipient's copy or a retained copy. When applied to diaries, notes, and journal entries, this symbol means that we are describing an original. If the document is identifiably a duplicate, triplicate, presscopy, or polygraph copy, that fact is explained in the source note; but the document is still marked as "D."
- L Letter. We use this symbol when we cannot determine whether a letter is a recipient's copy or a retained copy. If the letter is identifiably a duplicate, triplicate, presscopy, or polygraph copy, then that fact is mentioned in the source note; but the document is still considered an "L."
- C Retained copy of a letter or other document. It is assumed that such copies are kept for personal or official files unless otherwise stated. This designation also is used (with appropriate editorial explanation) for copies of letters sent to individuals other than the addressee. If the letter or document is identifiably a duplicate, triplicate, or poly-

graph copy, that fact is mentioned in the source note; but the document is still marked with a "C."

- Pc Presscopy. Used only for a retained copy of a letter or document. A presscopy was made by impressing thin dampened paper onto the original document, thereby transferring some ink to the thin paper. The result is frequently blurred and difficult to read.
- Lb Letterbook copy. A letterbook copy of a letter or document is a retained version copied into a bound volume.
- Df Draft of a letter or document.
- Pr Printed version of a letter or document. Usually published substantially later than a contemporary version.
- Tr Transcript of a letter or document made substantially later than a contemporary version. If a transcript is typewritten, that fact is mentioned in the source note. When the origin of a transcript can be identified, an explanation is provided in the source note.

The symbols above are used in combination with the following descriptive symbols.

- A Autograph text (text in the handwriting of the author).
- [A?] Probably autograph text.
- S Signed by the author.
- [S?] Signature cropped, clipped, or obliterated.

Seals are represented by the following symbols.

SEAL An official seal.

Seal A handwritten drawing of a seal.

LS, etc. The abbreviations "LS," "L.S.," "LS.," "L.S" as well as the words "Seal" and "SEAL" appear as in the original document.

Three special situations must be noted. First, if we transcribe from a photocopy made from another photocopy or facsimile, we mention that fact in the source note. If we are relying on a text which is itself an extract or abstract, we note that also. Finally, if we translate the text from another language, we explain that in the source note.

Repository Symbols

The following list includes all repository symbols used in this volume.

CtHi	Connecticut Historical Society, Hartford, Connecticut
CtY	Yale University, New Haven, Connecticut
DLC	United States Library of Congress, Washington, D.C.
DNA	United States National Archives and Records Service, Washington, D.C.
	RG 21 Records of District Courts of the United States
	RG 36 Records of the Bureau of Customs
	RG 46 Records of the United States Senate
	RG 59 General Records of the Department of State
	RG 233 Records of the United States House of Representatives
	RG 267 Records of the Supreme Court of the United States
DSI	Smithsonian Institution, Washington, D.C.
DUSC	United States Supreme Court, Washington, D.C.
GEpFAR	United States Federal Archives and Records Center, East Point, Georgia
	RG 21 Records of District Courts of the United States
MB	Boston Public Library, Boston, Massachusetts
MBNEH	New England Historic Genealogical Society, Boston, Massachusetts
MDedHi	Dedham Historical Society, Dedham, Massachusetts
MH-H	Harvard University, Houghton Library, Cambridge, Massachusetts
MHi	Massachusetts Historical Society, Boston, Massachusetts
MWalFAR	United States Federal Archives and Records Center, Waltham, Massachusetts
	RG 21 Records of District Courts of the United States
MdFre	C. Burr Artz Public Library, Frederick, Maryland
MiDW	Wayne State University, Detroit, Michigan
NHi	New-York Historical Society, New York, New York
NN	New York Public Library, New York, New York
NNC	Columbia University, New York, New York
NNMus	Museum of the City of New York, New York, New York
Nc-Ar	North Carolina State Department of Archives and History, Raleigh, North Carolina
NcD	Duke University, Durham, North Carolina
NcU	University of North Carolina, Chapel Hill, North Carolina
NjBaFAR	United States Federal Archives and Records Center, Bayonne, New Jersey

	RG 21	Records of District Courts of the United States
NjR		Rutgers—The State University, New Brunswick, New Jersey
PHi		Historical Society of Pennsylvania, Philadelphia, Pennsylvania
PP		Free Library of Philadelphia, Philadelphia, Pennsylvania
PPFAR		United States Federal Archives and Records Center, Philadelphia, Pennsylvania
	RG 21	Records of District Courts of the United States
PPIIn		Independence National Historical Park, Philadelphia, Pennsylvania
PSC-Hi		Friends Historical Library of Swarthmore College, Swarthmore, Pennsylvania
RHi		Rhode Island Historical Society, Providence, Rhode Island
RPB-JH		Brown University, John Hay Library of Rare Books and Special Collections, Providence, Rhode Island
ScCAH		South Carolina Department of Archives and History, Columbia, South Carolina
ScHi		South Carolina Historical Society, Charleston, South Carolina
ScU		University of South Carolina, Columbia, South Carolina
Vi		Virginia State Library, Richmond, Virginia

Short Titles and Abbreviations

<i>Ames</i>	Seth Ames, ed., <i>Works of Fisher Ames</i> , 2 vols. (Boston: Little, Brown, 1854).
<i>Annals</i>	<i>Annals of the Congress of the United States</i> , 42 vols. (Washington, D.C.: Gales and Seaton, 1834-1856).
<i>ASP</i>	<i>American State Papers: Documents, Legislative and Executive, of the Congress of the United States</i> , 38 vols. (Washington, D.C.: Gales and Seaton, 1832-1861). This series is divided into ten classes: <i>Foreign Relations</i> , <i>Indian Affairs</i> , <i>Finance</i> , <i>Commerce and Navigation</i> , <i>Military Affairs</i> , <i>Naval Affairs</i> , <i>Post-Office Department</i> , <i>Public Lands</i> , <i>Claims</i> , and <i>Miscellaneous</i> .
<i>BDAC</i>	U.S., Congress, House, <i>Biographical Directory of the American Congress, 1774-1961</i> , 85th Cong., 2d sess., H. Doc. 442, Serial 12108.
<i>Black's Law Dictionary</i>	Henry Campbell Black, <i>Black's Law Dictionary</i> , 4th ed. (St. Paul, Minn.: West Publishing, 1951).
<i>Bl. Comm.</i>	William Blackstone, <i>Commentaries on the Laws of England</i> , 4 vols. (Philadelphia: Rees Welsh, 1897).