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"THE SUPREME COURT OF
JOHN MARSHALL'S DAY"

ADDRESS

BY

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Anniversary of the Birth of John Marshall

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It is fitting that John Marshall, who brought such great strength and dignity to the law, should be responsible for meetings such as this where we might enjoy a few moments of relaxed contemplation of our calling.

However, it does not require a centennial celebration to bring to mind the scenes and incidents which have endowed this man with lasting greatness. For myself, I must confess that the beautifully carved stone frieze in the courtroom of the Supreme Court of the United States of the immortals in the law never fails to impress me with the genius that was theirs and its teaching that the law is an age-old product of human experience.

On the South wall there are nine law givers who lived before Christ: Menes, Hammurabi, Moses, Solomon, Lycurgus, Solon, Draco, Confucius, and Octavian. On the North wall there are nine equally great legal leaders who lived after Christ: Justinian, Mohammed, Charlemagne, King John of England, St. Louis of France, Hugo Grotius, Blackstone, Napoleon, and our own beloved John Marshall.

Seeing, in my mind's eye, that immortal figure, recalls a stirring observation of Mr. Justice Holmes: "If American law were to be represented by a single figure, sceptic and worshipper alike would agree without dispute that the figure could be one alone, and that one, John Marshall."

The preceding speakers already have spoken of aspects of John Marshall's life which secures for posterity that elevated reputation so well deserved. Though the temptation is great to extol the rare

and extraordinary qualities of his expositions of constitutional law, I shall take advantage of the opportunity so graciously afforded me today to touch upon the early life of the Court and to relate a few stories of the kind lawyers love to tell.

When Marshall took his seat as Chief Justice of the United States in 1801, the prestige of the Court was so low that it was difficult to obtain a leading lawyer to take the position.

John Jay had hesitated to accept the position of Chief Justice when Washington offered it to him in 1789. Subsequently he resigned to become a candidate for Governor of New York. Jay later refused reappointment because the national judiciary was hopelessly weak and Congress was unwilling to relieve the justices of the onerous duty of sitting in the circuit courts. Upon Jay's resignation, the position was offered to both Patrick Henry and William Cushing and refused by both. Rutledge resigned as Associate Justice to become Chief Justice of the Supreme Court of South Carolina. Harrison of Maryland chose to select a chancellorship of Maryland in preference to a seat on the Court.

The inferior position to which the Court had sunk was shown in other ways. When the Government moved to Washington in 1800, there was extravagant provision made for both the executive and legislative departments but the judiciary was treated indifferently. Until 1819 it had no home of its own. After opening its first term, the Senate

consented to accommodate the Supreme Court in one of its committee rooms. This was an undignified room 24 by 30 feet in size on the first floor of the Capitol. The Supreme Court was later pushed into a basement room, which was described as a "mere potato hole of a place." At first, it did not even have a reporter. Before Marshall became Chief Justice, its reports were published as an appendix to the reports of the Supreme Court of Pennsylvania. During its first three years, the Court had decided no cases on their merits. During its first eleven years, it had disposed of no more than 40 cases.

In sum, the Supreme Court in 1801 had neither funds, patronage, prestige, nor adequate quarters. But of all essential things, it lacked leadership most. The prior Chief Justices had not even devoted their full time to the work of the Court. Since each Justice read his own opinion -- even if in basic accord on the reasoning and conclusion -- it brought into prominence points of disagreement, thus creating in the public mind the impression that the judiciary was weak and disunited.

The people being traditionally hostile to authority were also none too friendly to federal judges. They resented particularly their enforcement of the revenue-collecting authority and the hated sedition laws which deprived them of liberty of speech and press.

Thus, as Marshall came to the bench, there was no popular support for the Supreme Court or, for that matter, any part of the federal courts.

When he left the Court, 34 years later, he had courageously and cogently established principles and precedents upon which the integrity and ordered growth of the nation have always rested; upon which human rights have been protected; upon which our freedom has been preserved. Indispensable to these favorable conditions for securing "the Blessings of liberty to ourselves and our posterity" was an independent judiciary which Marshall inspired, exercising all its great powers with self-restraint, fearlessly and without regard to public clamor or passion.

Marshall's opinions, themselves a classical library of the law, are impressed with magical qualities of enlightenment, instruction, and inspiration. Every re-reading unearths newly-discovered treasures. One thought which comes to mind to me--particularly as a legal officer in Government--provides a challenging standard for public administration. In Marbury v. Madison, the Chief Justice said: "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection."

Turning to the lighter side of his life, our distinguished members of the bench will forgive me, I am sure, if I tell one of my favorite John Marshall stories concerning judges.

As we know, Marshall was a man of grave and firm manner on the bench. But he also had a spontaneous wit which he frequently demonstrated in derogation of himself. The incident, for example, when a

lawyer lavishly praised Marshall for having attained the "acme of judicial distinction." With sober face, Marshall replied:

"Let me tell you what that means, young man. The acme of judicial distinction means the ability to look a lawyer straight in the eyes for two hours and not hear a --- word he says."

This man of great talent also could employ crushing irony to destroy an empty argument held together only by the force of words. Borrowing from Pinckney's fulsome phrases, he once administered the coup de grace to such an argument in these delightful terms:

"So exquisite was the skill of the artist, so dazzling the garb in which the figure was presented, that it required the exercise of that cold investigating facility which ought always to belong to those who sit on this bench to discover its only imperfection-- its want of resemblance."

There are many engaging stories of John Marshall's earthiness; his love of the simple things of life. In his day, the judges usually boarded in the same house and dined together. It was their custom to allow themselves wine only when it was raining. But "The Chief" was brought up, as was said in jest, on Federalism and Madeira. Occasionally, on a sunny day, he would say: "Brother Story, will you step up to the window and see if there are signs of rain?" Reluctantly, Story would be obliged to report there was none. Whereupon the Chief

Justice would cheerfully reply: "Well, this is a very large territory over which we have jurisdiction and I feel sure it is raining in some part of it."

There is, of course, a near-inexhaustible fund of stories surrounding John Marshall's life. Whether we review his life as a soldier, legislator, diplomat, statesman, or jurist exciting lore come to mind. However, consideration for the demands on your time, and a prior warning that I have the floor only for a brief period, requires that I forego the personal pleasure of speaking at greater length.

I should like, therefore, to close by quoting from a Richmond newspaper which, on the death of John Marshall on July 6, 1835, reflected the prevailing feeling of universal sorrow and deep devotion of his countrymen:

"No man has lived or died in this country, save its father George Washington alone, who united such a warmth of affection for his person, with so deep and unaffected a respect for his character, and admiration for his great abilities. No man ever bore public honors with so meek a dignity . . . It is hard . . . to conceive of a more perfect character than his, for who can point to a vice, scarcely to a defect -- or who can name a virtue that did not shine conspicuously in his life and conduct?"