

COLONIAL TRILOGY V



The Society of Colonial Wars in the State of Ohio

Presents

Kentuckians I have Known or Heard About

by

John C. Lee, Esq.

The Raven

by

Lawson E. Whitesides, Esq.

Lengthening Shadows

The Constitution Enters Its Third Century

by

Hon. John W. Peck

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We continue to collect vignettes of our history or commentaries on our nation's past. In this edition we present frontier incidents ranging from Kentucky to Texas, and a wide range of pioneer personalities from a farm wife to a state governor.

Our third article is a timely study of the U.S. Constitution by a Judge of the U.S. Court of Appeals, read at the Winter Court of the Society of Colonial Wars in Cincinnati. Although there are several local references, we thought that the analysis should be required reading for everybody, and we are proud to include it.

Frank G. Davis
Editor

KENTUCKIANS I HAVE KNOWN OR HEARD ABOUT

John C. Lee

Society of Colonial Wars in the State of Ohio

A native Kentuckian has a deep and abiding affection for his home state, not unlike the passionate and irrational sentiment that an Irishman has for old Erin or that a Texan has for the Lone Star State. But, it is an innocent aberration in all, and all are entitled to the indulgent consideration of alien critics whose roots are less deep, and whose historical background is less attuned to the finer things in life.

In the army, a drill instructor, working with an intractable recruit from Kentucky once said that the typical Kentuckian is scarcely more trainable than a mule; that he is stubborn, irascible, balky, and visibly impatient under disciplinary restraint. Whether this is true in whole or in part we do not have time to inquire, but anyone familiar with history will remember the devastating performance of backwoods Kentucky riflemen and their homemade rifles - widow makers, that is - against the British and assorted enemies.

Kentucky, being the 15th state to be admitted to the Union, was a comparatively well settled area in the late 18th century, well before Ohio was anything more than wilderness. Kentucky was a part of Virginia until 1782, and before this, settlers had been constantly embattled with each other and with absentee land speculators over land titles. There were no surveys made before land was originally sold off, and many parcels were sold several times to different people - a situation guaranteed to provide employment for hundreds of lawyers for many years. Any settler who lived on his land and managed to hold on to it in spite of Indian attack and legal battles over title, is worthy of great admiration. These conditions allowed only the fittest to survive, and perhaps this accounts for much of the fiercely independent nature of so many early Kentuckians.

Most of the early settlers were completely illiterate, but in 1780, the first institution of higher learning west of the Appalachian mountains was chartered, and Transylvania University has made Lexington a seat of learning for almost 200 years.

Since most of the desirable farm land had been spoken for by 1800, people, in their endless search for cheap land, had begun to look northward to Ohio, and it is no surprise that so many Ohioans, proud of their Kentucky heritage, are able to trace their ancestry back to Kentucky and Virginia. There are several kinds of Kentuckians; native born, immigrants, (voluntary and involuntary), honorary, and so on. But it has been well said that once a Kentuckian, always a Kentuckian.

Among early pioneers, perhaps the first white woman to set foot in Kentucky was Mary Draper Inglis. References do not agree on the spelling; some spell it Inglis and some Ingles.

Mary Inglis was born in Philadelphia in 1732, daughter of George and Eleanor Draper Scotch-Irish immigrants. The Draper family moved to Virginia near Blacksburg in 1745, and a settlement was formed known as Draper's Meadows. It was not long after the settlement was formed that George Draper was killed by Indians. In 1749, Mary Draper was married to William Inglis, she at the age of 17. She was below average size of the Frontier women of the time, but she had a fine figure and is said to have been possessed of a gracious manner. She was quiet but had the strength of character and tenacity of purpose typical of the Scotch-Irish. She could stand beside her horse and leap into the saddle unaided. She could stand and jump as high as her head. In due course, she gave birth to two sons, and was carrying her third child when the Indians attacked.

A change was taking place in the primeval forests of the west. The final contest for control in the New World between the Briton and the Frenchman was at hand. France was already agitating the Indians in every lodge and village in the Ohio Valley. But the settlers at Draper's Meadows, Virginia, felt that they were out of the main stream of the conflict.

On July 8, 1755, there was a gathering at the Inglis homestead - so typical of frontier days - neighbors had come to help with the wheat harvest. Every man had brought his gun, but these were left at the house while they were in the fields. The women were at work preparing a feast for the harvesters when the Indians attacked. Most of the women and children were slaughtered. Children were picked up by their feet and their brains were dashed out against a log. The savages rounded up all the horses in sight and packed all the loot on them, including all the guns and ammunition. After setting fire to the house, they took Mary Inglis, her two boys, and Mrs. John Draper as prisoners. Mrs. Draper had been badly wounded in the arm in trying to save her young child. The men, seeing the flames, came running, but being without fire arms or horses, they were unable to launch an immediate pursuit. Further, each man, fearful of his own home, ran for it to ward off a similar attack. William Inglis was restrained from pursuit until an organized posse could be formed.

The prisoners were forced to walk, and here began an epic journey of hundreds of miles over some of the most difficult terrain in the eastern part of the country. Mary Inglis, some 8 months pregnant, was forced to carry her youngest son who soon tired of walking. The older boy also began to falter, and so Mrs. Draper, although severely wounded and suffering much pain, took the younger child and carried him until nightfall. On the second day, Mary Inglis realized that it would be impossible for her to bear up under the burden of her son, Thomas. She was convinced that if some other arrangement were not made for the conveyance of the children, she would soon see them murdered by the Indians. When a halt was made for food, she set about the preparation of the best meal to be made from the

material at hand. Her success was such that the Indians were highly pleased. When it was finished, she assisted them in managing the packs. She was then able to move about the camp without restraint and concealed her fears from the savages. When they were ready to set out again, she asked the chief for permission to ride one of the horses. He permitted her to do so, and to take up the children. She requested that Mrs. Draper be allowed to ride also, but this was refused. On the third night out, Mary Inglis gave birth to a baby girl, but this did not delay the march which lasted 29 days, down the New River and Kawha River valleys to the Ohio and to the Shawnee towns at the mouth of the Scioto River. Upon arrival, in the midst of much excitement, Mrs. Draper was forced to run the gauntlet, as was customary, but Mary Inglis was spared this ordeal. Mrs. Draper, although not recovered from her wounds, eyes blazing with defiance on the murderous rabble, sprang forward on the course between the lines and was immediately assailed by the merciless mob. Wounded as she was, she fought fiercely as she snatched weapons from her assailants. She overthrew warriors, beat down squaws, and brushed aside youths and dogs. When she reached the council house, she was suffering from many additional wounds and her arm had again been broken. On the third day after arrival, the children were taken away from their mother and sent away to other villages. In October Mary Inglis was sent with a party of twenty warriors, three Frenchmen and an Old Dutch woman down the Ohio to Big Bone Lick in what is now Boone County, Kentucky, near the greater Cincinnati airport. They were sent there for the purpose of making salt. At this point, Mary Inglis made up her mind to escape without further delay. She and the Old Dutch woman requested permission to go in search of wild grapes and so had a full day's start before they were missed. The only preparation for the trip was to get a blanket, a tomahawk, and a large knife for each. For weeks, they were to be in constant danger of meeting roving bands of Indians and recapture meant death. They had no guns to shoot game or to defend themselves. When they came to a river or a stream emptying into the Ohio, they had to traverse up the tributary far enough so that a crossing could be made. They managed to steal a horse near the Indian village opposite present day Portsmouth, Ohio and also found a supply of corn. They kept the horse until he drowned in the big Sandy River. The Dutch woman became quite a problem and tried to kill Mary Inglis, but Mary was able to elude her by crossing to the opposite side of the Kanawha. About the last part of November, after enduring unbelievable hardships, Mary Inglis arrived at the base of Salt Pond Mountain. Night was approaching; snow had fallen and it was bitterly cold. She was confronted by a gigantic sheer cliff, some 280 feet high, and with the base in the water. She tried to wade around it, but it was too deep. She had nothing to eat, and she could not find any place to curl up for the night. In despair, she threw herself on the bare ground and there lay in that pitiable condition, more dead than alive, until the next morning. She knew that she was only about fifteen miles from home, so she managed to scale the cliff, inch by inch. Getting down the other side was even more difficult, but after reaching the base, she dragged herself up the river valley and found a fenced-in corn field. As it turned out, it was the farm of Adam Harman, a neighbor of the Inglis family. Mary Inglis had been a captive for 5-1/2 months

before she was reunited with her husband. It took her some 40 days to return home after making her escape at Big Bone Lick. Mrs. Draper was released by the Indians after seven years. Mary's youngest son, George and the infant died shortly after being separated from their mother. Thomas Inglis, the oldest son, remained with the Shawnees for 13 years and was finally ransomed by his father. Some will argue that Mary Inglis was not a Kentuckian at all, but rather an unwilling visitor who, when she returned to her home, was not exactly overcome with glowing praise for this land of milk and honey.

JOHN FILSON, KENTUCKY'S EARLIEST HISTORIAN AND CARTOGRAPHER.

John Filson was born in southeastern Pennsylvania along the Brandywine, in 1747. Raised on the farm but trained away from it, he pursued studies in Latin, Greek, French, History, and Mathematics, and eventually went into teaching. He inherited a modest estate from his father but was not inclined toward farming, and feeling the call of the West, like many others, he set out for Pittsburgh, and in due course arrived over the Ohio River-Maysville route to Lexington. He was at that time 36 years old, and he sensed the importance of land acquisition under the favorable economic and legal conditions then existing. Virginia's laws relative to her western lands and her depreciated paper currency - nothing but treasury warrants - made the matter of securing choice land in Kentucky quite easy and very attractive. Of course, no one then anticipated the legal tangles that were to come; due to the absence of surveys. In Dec., 1783, Filson acquired nearly 13,000 acres in the Elkhorn and Ohio River country of central and northern Kentucky. A considerable part of this, 5600 acres, was located on Big Bone Creek where he undoubtedly had an eye on the value of possible supplies of salt. Certainly, he did not buy the land for its agricultural values. He also bought land in Jefferson and Fayette counties.

During the period, 1783 to 1784, shortly after his arrival in Lexington, while teaching school, he started to gather material for his book, "History of Kentuckee" and the accompanying map. These were the days that he spent in interviewing Daniel Boone, James Harrod, Levi Todd, and many of the other early explorers, hunters, and settlers. From the lips of Boone, he took those colorful statements upon which most of the early romantic history of Kentucky is based, and it is essentially upon this that all of Boone's personal fame rests. He saved Boone from an oblivion that has swallowed up many others and has left to posterity a priceless tale of early days in Kentucky. For stirring action and regional description, this book has rarely been equaled as a piece of frontier writing in any part of this country. In 1784, Filson took his manuscript and map, and journeyed to Philadelphia to have it printed, and in the same year it was published. A book of 118 pages, copies were sold for \$1.25 each. Original edition copies today are worth perhaps over \$10,000.00.

By 1787, his private affairs had become much entangled, and his estate which had included thousands of acres in Kentucky ceased to exist. In such straits, he naturally turned to his old profession of teaching school. In 1788, Robert Patterson, High Sheriff of Fayette County, formerly his legal counsel, showed him a plan for establishing a town on the north shore of the Ohio River opposite the mouth of the Licking River. Later, in August, a promotion agreement was reached between Patterson, Filson, and Matthias Denman, the owner of a considerable tract at this point. Certain duties and obligations were set forth, and each was to share an equal third in the project. At this point, mystery envelopes the career of John Filson. On September 22 and 23 he was surveying his plan for the town which he had named Losantiville - city opposite the Licking's mouth. A few settlers were present as were his partners. If he kept a journal, it has been lost. There is no further account except an old letter from Judge J.C. Symmes, saying that Filson was murdered and scalped by Indians. Filson's identification with the Losantiville enterprise was hastily brushed over upon the arrival of Israel Ludlow, a Maysville Kentucky surveyor, who came to take his place. Filson's heir, his brother, Robert Filson, received nothing of the covenanted one-third interest in the town site. In 1790, when Governor Arthur St. Clair came down the Ohio, to Losantiville, he arbitrarily changed the name to Cincinnati. At one time, present day Plum Street was known as Filson Street, but for some reason it was changed to Plum. There is, however, a Filson Place in the downtown area of Cincinnati, and a small park area, to commemorate the name of the man who first laid out the streets of the City.

Summer Outing
The Literary Club
Forest Retreat, Carlisle, KY
June 10, 1968

THE RAVEN

Lawson E. Whitesides, Esq:

Secretary General

General Society of Colonial Wars

This paper covers in part the story of the man called "The Raven," a name given him by the Cherokee Indians, who were to be his friends for his whole life. Our Samuel was born in 1783 in the upper valley of Virginia, the fourth generation of the Houston family to live there. He was truly one of the most unusual and able men of this country in the nineteenth century.

The first of the Houston family in this country had been an Ulsterman named John Houston. He came from a substantial family in the north of Ireland and brought his wife and children with him, landing in Philadelphia in 1730. At once he moved to the west of Pennsylvania, and when new lands were opened in the valleys of Virginia, the Houstons, with the other Scotch Irish settlers, took up land there. Settlement was made in the fertile lands near present day Lexington, Virginia. The place was called Timber Ridge, and this name continues to this day.

Robert Houston, son of the emigrant, took over Timber Ridge at the death of his father. Hard work and good farming made the plantation prosper. The size was increased and more slaves were obtained. This area had many hard working new-comers and the whole valley seemed to bloom. However, from time to time there were still Indian troubles nearby and the settlers had to serve with the local units of the Virginia militia. Robert did his part and was in several of the campaigns of the French and Indian Wars.

In the next generation, Timber Ridge passed on to the first Samuel Houston, father of the subject of this presentation. This Samuel was not the most industrious farmer, but he did have many other interests. When the Revolutionary War came, he was to serve in the Virginia Continental Line as a Captain in Morgan's Rifle Battalion, a collection of the finest riflemen ever assembled in any infantry unit. When the War was over, most of the veterans, if they had a sword, went home and beat it into a plowshare. However, this Samuel found the military life to his liking. Serving as a Major and Inspector of the Virginia Militia, his service was required in many places and for various periods of time. The Timber Ridge was to suffer from his neglect. Some property and slaves had to be sold to support the family. When news was received from relatives and friends about the new land over the Alleghenies on the

Tennessee River, Samuel purchased a tract and planned to move there. This was not to be, for he died too soon, and in 1807 his widow gathered the nine children, the property and slaves that were left, loaded all on to the wagons, and moved west over the mountain trails to their new Tennessee home site. This was near Maryville, not too far from present day Knoxville, and at the foot of the Great Smokey Mountains.

Our Samuel was the third oldest of the Houston boys. The two older ones took charge of their younger brother. The whole family was excited about going to the new country. Sam had heard of the deep forest and the Indians in this area, and he looked forward to meeting them and learning about how they lived. School in Virginia had not been very attractive to Samuel. Attendance in total was perhaps about three years. He liked history and geography but objected to learning any mathematics. He soon grew restless at school and resented having to do farm work, so, with dreams in his head and a book under his arm, Sam went to live with the nearby Cherokee Indians living at the shoals of the Tennessee River.

At the head of this tribe was an old Chief, Oo-Loo-Te-Ka, who had no children. He took Sam into his cabin and treated him like a son. The Chief's head man used the name of Jolly but he really was named Rogers. He was the father of two sons who were the same ages as Sam's brothers that he had left back at the farm. In this family was also a sister who was named Tulaquah, but in later life she was to be called Tiana Rogers. This family had a grandfather who was a Scot trader who, during the Revolutionary War, went over the mountains from South Carolina and married into the Cherokee tribe. Many generations later this family was to produce the wonderful cowboy humorist, Will Rogers.

From time to time Sam would visit his home and see his mother. Finally, his brothers persuaded him to stay and go to work in the family general store as a clerk: This he found to be boring so he went back to the Indians and more and more he became like one of them. He learned the language and their traditions. Life here was slow and pleasant, without the rush and problems of civilization. From time to time in his visits to his family he would bring back presents for his Indian friends. Soon his bill at the store reached one hundred dollars and he had to pay off. Sam found that what the settlement really needed was a country school and that he should be the proprietor and teacher. Tuition was to be paid one third in cash, one third in cloth, and one third in corn. The project was successful and his debts were paid off and Sam now looked for new adventure.

There were militia companies and guard units about but these did not appeal to Sam. However, when the recruiting sergeant of the United States Regular Army paraded the flag and put the silver dollars on the drum, our Sam picked up one to show his intentions. He was now enlisted in the 7th Regiment, U.S. Army, encamped at Knoxville.

Sam made good progress in the Army training. In six months he was given a commission as an Ensign in his regiment. The preparations were going forward for the

campaign to be waged against Indians to the south who were on land sought after by new white settlers. The whites who were there were being attacked by the Indians who had lived and farmed there for many years. These Indians had a good way of living and resented the intrusion of the whites. The Creek tribe here was under the leadership of Chief Weathersford, a respected half breed well known to many of the whites. The Indian defenders selected a horseshoe bend in the Tallapoosa River as the place to make their stand and protect their homes. Entrenchments were prepared and the Indian women and children put back from the line of attack. It was March 26, 1814 and Ensign Sam Houston was 20 years old when the American Army attacked. The first American over the barricades was the Regimental Commander Montgomery. He was shot down as he led his men forward. Seeing this, and without hesitation, Sam waved his sword and was over the wall with the troops following him. The center of the fight was around Sam until he was wounded with an Indian arrow shot deep into his leg. He was moved aside and lay under a tree and the battle continued. General Andrew Jackson himself soon passed by, saw Sam lying there and ordered him to stay put until help could be given him.

Prior to this battle the Indians had been told by their Medicine Men that clouds would appear in the sky and that at that point they would win. The clouds did not appear and band after band of the Indians were slaughtered. Nearly all resistance was over except for a small group of defending Indians that had taken refuge in a log redoubt and who continued to fire from the portholes. Our wounded Sam saw this situation, rose to his feet, and again led his men in a direct attack. While firing into one of the portholes, he was hit with two balls that imbedded in his shoulder. Bleeding profusely, he was again taken from the field of battle. There was no medical attention available, and he was to lie under a tree all night. The next day Sam was put on a litter carried between two horses and started the long journey back to his home in Tennessee. When he arrived there and was taken to a doctor, his condition was such that he was told that nothing could be done for him and he was returned to his mother's home. In several weeks, however, he had recovered enough to be taken back to the doctor. The wound was opened, one of the balls removed. The shoulder was repaired, but he suffered from pain the rest of his life. As badly wounded as he was, he recovered enough to rejoin his military regiment, now stationed in Nashville where General Andrew Jackson was in command. The General had decided to stay and build at a nearby place to be called the Hermitage.

The next year was taken up with recovery from the wounds of battle. From Nashville he was sent to New Orleans, still on administrative duty. The climate there, and the social life was not helpful to his recovery. The Army sent him to a surgeon in New York City who operated upon his wounded shoulder. The return trip was to be most valuable to him. Returning through Washington, D.C., he saw the Capital of the country for the first time. This was shortly after the British Army had burned many of the buildings. The President's home was being repaired from the damage and would thereafter be known as the "White

House." The things that Sam saw on this return, and the people that he met, would influence his later life.

The year was now 1816 and was to see a treaty signed between the U.S. Government and the Indian Tribes in the Southeast. The chiefs of the tribes were dealt with unfairly and their trust was misplaced. Promises were made for the lands that they were to occupy beyond the Mississippi River. These lands were in wild country never farmed and certainly not as good as the soil that the Indians had cultivated for many generations in the Southeast. The Indian Agents who were to supervise the living in the new lands were corrupt in many cases and took further advantage of the trusting Indians. Sam Houston had been detailed from the Army to help with moving the Indians. He knew many of them, could speak the Cherokee language, and was trusted by the red men. This transfer of Indians was the source of much suffering as the families gave up their homes to move to territory that was wild, poor and difficult to farm.

After a year, a number of the Indian leaders gathered and talked of their problems and the lack of honesty on the part of the agents of the government. It was decided to send a delegation to Washington to tell the President of their plight. Their travels took them through Nashville and there they were able to persuade Sam Houston, their long-time friend and helper, to go with them to Washington as their speaker. Sam reverted to his earlier days when he had lived with the Cherokees at the shoals of the Tennessee River. Putting on Indian garb, he led the group into the nation's Capital. This, of course, created a stir as groups of Indians in their native dress walked the streets and visited the offices of the government. After calling upon John C. Calhoun, then Secretary of War and deeply involved in carrying out the movement of the Indians, it was discovered that Houston was still an officer in the U.S. Army and on leave. Secretary Calhoun summoned Sam and severely rebuked him for his appearance and activities. This was to have two most serious results. First, Houston decided to resign his commission in the Army. Next, his opinion of Calhoun was such that in later years he would join with others to block Calhoun's candidacy for the Presidency of the United States.

Sam Houston now decided on his plan of action for his further life. He took up the study of law and passed the Bar Examination to practice. Soon he was appointed the prosecuting attorney for a circuit court near Nashville. His friends from military days helped him to become the Commander of the State Militia. These two opportunities to travel and meet other people were to be helpful in his political life. At this time, General Andrew Jackson was surrounding himself with able young men and political powers in his attempt to obtain the nomination for President of the United States. Sam was certainly one of these. As part of this plan, Sam was elected to Congress in 1823 and served there for four years. Here

again he made many friends and also a few enemies. Now 30 years old, he certainly had a lot of experience that would help in his later life.

While in Congress, one job that was given him by General Jackson was to sidetrack the appointment of John R. Erwin as Postmaster of Nashville. This was a strong political office and Erwin was the son-in-law of Henry Clay, a rival of General Jackson. Sam did his job, but in doing so offended Erwin, who issued a challenge for a duel. This was still common but, of course, was against the law. Erwin had this challenge presented by John Smith, a professional gunman. The challenge was refused by Houston's second because the gunman was not a Tennessee resident. The challenge was next presented by Colonel William A. White, a well-known political figure, and Houston accepted it. Sam made his preparation under the guidance of Old Hickory who had participated in a number of these events. Sam was taught to hold a lead bullet between his teeth to steady his nerves when firing.

The day for the duel finally arrived. Both of the participants and their followers moved up to Duncan's Tavern, just over the Kentucky border line and about 40 miles north of Nashville. Here the laws of Tennessee against dueling would not apply. Shortly after dawn, the distance was measured, the pieces cocked, and at the signal, Colonel White fired and missed. Sam then fired and seriously wounded his adversary. All then present hastily left the "field of honor" and returned to Nashville. In time Colonel White was to recover and Houston was to be indicted for assault with a weapon by the Grand Jury of Simpson County, Kentucky, whose Foreman was a strong supporter of Henry Clay. No arrest was ever made.

The great notice given this duel enhanced Houston's popularity with the people of his state. Sam was still in Congress but had been nominated and was soon elected Governor of the State of Tennessee. The date was now 1827, Sam was 34.

The election to the position of Governor was a great honor for Houston, and he delighted in it. The approach that he took to the duties of this office was that he was to be the people's governor. Building roads and bridges so that farmers could get their crops to market and enabling them to move about from their isolated villages was of prime concern to him. Sam was also ready at all times to go to the Court House of any county in the state and talk to the people. He was a most effective speaker and he enjoyed the crowds who cheered his appearances. This was to be his position for his term of office and he intended to get everything he could from it. His efforts at home helped to support the presidential plans of his sponsor, General Andrew Jackson. Old Hickory was successful too, as General Jackson became President of the United States in 1829.

This was the time that the prosperous and lively City of New Orleans was to have their celebration of the great victory of General Jackson and his American Army over the British in the last battle of the War of 1812. This War had been over for many years and even the victory itself had been after the Peace Treaty that ended the war had been signed. The city

of New Orleans was growing in importance, cotton was king, and prosperity was everywhere. Governors and National figures from all over were invited for the festivities and celebration. Sam was there to see and be seen.

General Jackson was now the President of the United States, and there were already those who thought that someday in the future another gentleman from Tennessee would hold this office - this to be our Samuel Houston.

Sam was still unmarried. When he served in Congress he had perhaps some ideas about marriage, but they had not materialized. He was now Governor, and a beautiful young girl that he had watched grow up was now a young lady of 18 years. Eliza Allen lived in nearby Gallatin, Tennessee, and was the daughter of Colonel John Allen, a well-established planter who was also a powerful political figure. Eliza had two brothers, well known to Houston from the Indian Wars that he had fought in Alabama against the Creek Indians. The parents and family of Eliza were very ambitious and thought that the Governor, even though twice the girl's age, would make an excellent match for her. The young girl was persuaded by her parents that marriage to the Governor was the thing for her to do. The great wedding took place at the Methodist Church in Gallatin, Tennessee, before a large and colorful congregation. This was January 1829, and this was perhaps one of the events that would change some history of our nation in the years to come.

There was no time for an extended honeymoon trip for the newly married couple. Residence was established in the Inn in Nashville where Sam had lived as a bachelor. The Governor was immediately to resume his active political life and travels. There were ceremonies to attend all over the state, speeches to be made and also a reelection campaign to pursue if he was to get his second term of office as Governor. The forthcoming election campaign was to be a hard one. The opponent was a previous governor who had been out of office long enough to qualify to run again.

The campaign itself evolved into a series of debates. Each day they would be held in another town. The first thinking about the chances of Sam's reelection changed and it was apparent that his popularity would carry him back by a large majority. Houston then returned to his bride who had been left in Nashville. What he found was most shocking. The forlorn bride was reading her old love letters from one of her old beaux and was crying. She was certainly having second thoughts about the situation that she found herself in. She realized that she had been persuaded by her parents to make a choice which was the wrong one for her. There were many angry words spoken and Sam left to tell her family to take her back to Gallatin to the family home. Houston went into seclusion and would not talk about what had happened. Many rumors were passed along, but Sam kept silent. Finally he summoned his friend, the Sheriff of the county, and gave him the letter of resignation as Governor of the State of Tennessee to be delivered with the statement that he was leaving at once for the

Indian country in the West. As he was about to board a boat, he did tell one of his close friends, "I exonerate Eliza freely. But it is no part of the conduct of a gallant or generous man to take up arms against a woman. If my character cannot stand the shock, let me lose it." Sam Houston until the day of his death kept his silence about his parting from Eliza Allen, regardless of what it was to cost him.

Houston made up his mind as to what his life would now be. Going to the west where his Indian friends had gone before was his desire. The boat that he boarded went down the Cumberland, then the Ohio and finally the mighty Mississippi. There he would change to another boat and go up the Arkansas as far as it would go and then follow the paths to the Cherokees. These Indians were his oldest friends from the days he lived with them in his restless youth. He felt sure Chief Oo-Loo-Te-Ka and his headman, John Rogers, would comfort him and he could shed his troubles from civilization and regain the pleasures of his youth.

Word travelled to the Cherokee Indian villages in the Arkansas Territory ahead of Sam on his journey. After leaving the river, travel was up the Indian paths and not the dirt roads used by the military. All along the way there were old friends to greet and a warm welcome was given him. His friend Chief Oo-Loo-Te-Ka invited him into his cabin and said that he was sure that the gods had sent him to help with their problems. White frontiersmen were again trying to move them, this time further west, and to take over their new land. The old chief was familiar with Houston's recent problems in Tennessee and assured him that this would soon be past for him now that he was in the land of the redmen.

These Cherokees who had been forcefully moved from their ancestral lands in the southeast to this new and raw country had found many disappointments. Not only were there white squatters on their lands, but there were to be raids by unfriendly Comanche and Pawnee tribes who lived to the west. The American Fur Company of the Astor's was operating here. The prices they charged the Indians for their supplies were too high and the prices they paid for the Indians' furs were much too low. Indian agents of the U.S. Government dealt unfairly and there were also some white traders selling the Indians hard liquor.

News passed among the Indians quickly that Sam Houston would see that justice would be done as he had friends in high places. There were still a few tribes that did not know about Houston and also there were some white traders and agents who resented Sam's interest in this area. Sam planned to visit and assure them of his good intentions. In the meantime many of the younger Indians planned an Assembly to state their grievances against the government and to plan their future actions. Sam was a bit leery of this and took Colonel Arbuckle, local military commander, into his confidence. Visits were made to both Indians and whites, to the end that when the Indian Assembly was held no actions were taken. The

chance of Indian wars at this time was avoided. Sam sent his messages to Washington and the Indians felt that better treatment was to come. General Jackson was happy to hear that Houston was being helpful and not causing trouble as some had alleged.

Houston's travels took him further west where he was to meet August Pierre Chouteau, son of the founder of a fur and trading company long established there. Chouteau had spent 20 years in this business after leaving the Army. He had graduated from West Point but had chosen to return to live in the country where his mother had been born. Chouteau had earned a most respected position by his fair and honest dealings both in prices for his goods and the payment for the furs that he purchased. He had now decided in his mid-forties to retire and was looking for someone to take over his operations. He thought that perhaps Houston would be interested. They did become fast friends and later Chouteau would travel to Washington to testify on behalf of Sam when charges of fraud were unjustly levied against him.

John Hamtramck was an agent with the Osage Indians and John Brearly was assigned to other tribes in the west. From what Sam saw and was told about their operations, he believed that they should be removed from their governmental positions. Later Houston was to have contacts with a Major duVal who the Cherokees labeled as bad. Strong charges against him were made in the distribution of their annuity. The Cherokees were to receive these payments for the land that they had left behind when they were moved from the Southeast. deVal passed out paper scrip telling the Indians that there was no coin and that this paper would be exchanged for money. The Indians knew little about paper transactions and squandered the scrip on shoddy merchandise at high prices. Also the liquor dealers were to come in and accept the paper. Soon all this distribution was in the hands of a few white traders and the Cherokees had nothing. It did not take the Indians long to find that they had been defrauded.

Malaria had been contracted during Houston's travels. His friend the old Chief took him into his cabin and had the tribal medicine man nurse him. Houston was to recover in spite of the treatment that was prescribed - much smoke and chanting. Sam was taken into the tribe and given full citizenship. Appointment was also made to him to be an Ambassador to Washington with a group of Cherokees who were to present their complaints and protests. White settlers were again encroaching upon their lands.

Houston wore Indian clothes to the nation's Capital, buckskin breeches and a blanket over his shoulder. This appearance created quite a stir when a former Congressman, Militia General and State Governor was to visit officials and offices so attired. At this time there were also negotiations going on for a feeding contract which the government was to furnish the Indians until their land became productive. There were a number of bidders including Houston and the Secretary of the Army. Charges of collusion and fraud were made.

However, after full investigation, Houston was cleared. Several years later this issue would again be raised.

The contacts that Houston still had in Washington helped solve many of the Cherokee's problems. Hamtramck and four other Indian agents were dismissed. Major duVal was to die of natural causes at this time. Sam was now to return to the Indian lands and build a large log home and settle down for a quiet period of this life. Talahqua, Tiana Rogers, the Indian girl whom he had known from his restless youth on the shoals of the Tennessee River, was now a widow with two children and she became his housekeeper. There was soon to be another thing that occurred to change Sam's life. His mother died in Tennessee, and he returned there for her funeral. Seeing this civilization again caused him to make the decision to again strive to be a leader of men.

Soon the Cherokees were to send another delegation to Washington and Sam was asked to go as their spokesman. This he realized would give him the chance to talk with General Jackson, his old advisor. Sam and the General had discussed Texas before but Sam had been advised to avoid taking part in the controversy. The President had hoped to be able to handle the problem with diplomacy. Anthony Butler had been sent on a mission to deal with the leaders in Mexico City and to offer five million dollars to buy Texas. The other side was interested in the money going into their pockets and not the National Treasury. This plan was uncovered and was to fail. Other more responsible Mexicans resented this offer and considered it bribery. As a result, the Mexican government would now restrict further Americans moving into the territory.

Texas and slavery were two great areas of public discussion. The slave states wanted to bring in more new states that would allow the institution of slavery as practiced in the Old South. The Easterners, where many anti-slavery organizations were operating, did not want to see any further expansion and, in effect, were trying to cut it down and eliminate it entirely.

During this trip another matter arose in which Houston was to take part. Jackson was trying to keep his policies in place and to see that his successors were of his selection. John C. Calhoun was Vice President and was very eager to follow as President. Houston recalled the insult given him by Calhoun years before when he was still in the Army but acting as a spokes-man for the Cherokees. Houston produced a letter long held in the War Department files in which Calhoun had made charges against General Jackson's actions in the Florida War. As a result of the conflict which this provoked, Calhoun's plans for the Presidency were thwarted, and he was also to resign as the Vice President.

Houston's visit with the Cherokee delegation this time was to see an affair about a matter long closed. Congressman Stanberry of Ohio, when he heard that Sam was in town, brought up in the House of Representatives the old matter of the ration contract for the

Cherokees. Reviving this old matter enraged Houston and he was determined to seek revenge. Late one night he accosted Stanberry on a dark street and challenged him. There was a scuffle and the congressman pulled out a pistol. This he fired but it failed to go off. Houston had his strong hickory walking stick and put it to good use. He administered a severe beating and then picked up his opponent by the feet and kicked. This incident Stanberry reported to the Speaker of the House of Representatives as a violation of Stanberry's rights. An inquiry was held; Sam was to testify and upon vote was to be found guilty. He was then censured by the Speaker in a most mild manner. Sam and the Speaker were old friends.

The appearance before Congress had been good theater and Sam had made the most of it. The new clothes that he wore were of good cloth and had been furnished him by his old friend, General Jackson. His attorney was Francis Scott Key of Baltimore. The galleries were filled by the curious and it was said at the time that the large number of ladies present for the trial indicated that Houston was still remembered.

Houston used this visit to have serious discussions with President Jackson. General Jackson was most concerned about the problems of Texas and Mexico. Sam was asked to go to Texas, investigate problems with the Indians and report back about the whole situation. Jackson even gave Sam five hundred dollars personally to cover his travel expenses.

Houston returned to the land of the Cherokees, sold his property and crossed the shallow river into Texas. He headed for Nacogdoches where he was soon to meet many of his old friends from Tennessee who were there. Most everyone was agitating for freedom from Mexican restrictions and laws. Meetings were being held to plan for further action. Houston attended a number of these meetings in different locations and observed the temper of the people. A trip was also taken to see Stephen Austin who felt at this time that diplomatic means could avoid further trouble. Another trip was to be made to San Antonio de Bexar to see his old friend Sam Bowie. Bowie had married the daughter of the Vice Governor and had two lovely daughters. After all these observations, Sam concluded that nothing should be started until proper organization and military training could take place. Nothing should occur now that would delay final victory. In the meantime, Austin had journeyed to Mexico City and presented his plan and had been jailed for his efforts. War now seemed inevitable and Houston was made Commander-in-Chief of any army that did not yet exist. Sam went directly to New Orleans to obtain support, recruit and purchase a General's uniform.

Fighting was soon to start between small bands of Texans and local Mexican troops. Gonzales was a Mexican outpost used in Indian wars and where they had left behind two small cannons. When the Mexicans tried to retrieve these, a fight ensued, and they were repulsed by local forces. Nearby at Goliad more weapons were stored - 300 rifles, 2 more

cannons and plenty of ammunition. Local forces seized the stores and drove off the Mexican storekeepers. Now there was enthusiasm in the air and many of the Texans were marching to San Antonio de Bexar where there was a Mexican garrison under command of General Cos, a brother-in-law of General Santa Anna. Fighting started in the city streets and an old plainsman named Ben Milam led the charge down the streets, and the Mexicans were forced to surrender. There was no way that this large number of prisoners could be fed. General Cos was to sign his pledge and the whole force paroled to return to their Mexican homes in the south. Soon General Cos was to violate his word of honor. Sam tried to avoid and stop these outbreaks as he felt that this would bring on the full force of General Santa Anna's army.

Soon there was to be the siege and massacre at the Alamo that is well known to all. Houston had ordered Travis and his loyal band of fighters to burn the mission and come to join the forces being organized at Gonzales. This order was not to be followed and the defense started against impossible odds. Days of siege and bombing were to follow, then the walls were scaled and all the defenders were put to death. Bodies of the defenders were piled in stacks with firewood and the funeral pyre lighted. This is tragic and colorful history but was certainly an unnecessary loss of wonderful and valuable men and weapons.

Fannin and his force were at nearby Goliad. A few of these Texans had left to go to the Alamo and were to die there with the other defenders. Houston had given the order to destroy the defenses at Goliad and join his assembly of forces at Gonzales. Fannin was slow in making up his mind to obey. After the Alamo he did decide to move, but it was too late. His troops were intercepted en route, on level open ground and they too were massacred. These Mexicans were under command of General Cos who had signed the parole.

These defeats were learned of by Houston and he had to make the best of it. The decision was made to move this force of about 600 to better defense positions to the east. Here distance and rivers would slow the forthcoming attack by Santa Anna. The Mexicans had made the error of dividing their forces to travel different routes in pursuit of the Texas forces. Houston knew the land and was to obtain some local support. More men came in to join Houston's small army and it was at this time that the two cannons purchased by Cincinnatians arrived. The army of Santa Anna moved to an area between two streams which were surrounded by swamp. Houston found a small rise of land which gave him an advantage in observation and firing and prepared to attack.

At San Jacinto there was only one bridge over a swamp. Water was on both sides of this field. Once the battle was begun there would be little or no chance of either side escaping. Houston ordered the bridge chopped down and the wood material burned. Texans knew they had to win to live. All was ready for battle, but Sam decided to wait for the best time. This was not at night or at dawn but in mid-afternoon when he knew that Mexican troops who had moved fast would be resting and their officers taking their siestas. The drums

sounded and the Texans moved forward in good formation and soon overran the slight defenses that the Mexicans had erected. The Mexicans had been surprised by the time of the attack and were confused. They did not have leadership or a plan to counter the force which struck. Texans fired their rifles and then used the butts of their guns as well as knives to finish off those who resisted. Some Mexicans tried to escape but they found themselves mired in the muck of the swamp. The fact is that this decisive battle took place in about 20 minutes. The Mexicans had about 1500 men to 800 Texans but spirit and leadership made the difference. Houston had several horses shot underneath him and he was badly wounded in his leg. Santa Anna was captured as he tried to escape in a poor disguise. Sam was to hold Santa Anna his prisoner until he accomplished what he wanted. Santa Anna issued orders to all his Mexican forces to return to their homes below the Rio Grande. Houston sent him under guard to Washington so that General Jackson and others could see his conquest. Also, this would help close the war that had just ended.

Local Texas politics were in a confused state. The head-quarters had been moved many times. The head of the government at the time came to the San Jacinto battlefield after the fighting stopped to inspect but refused to take Sam Houston with him to a doctor on Galveston Island when he returned there.

In short order the Republic of Texas was to be formed. Houston, the hero and the one responsible for freedom from Mexico, was elected the first President of the Republic, the year was now 1836. Houston was also to go to New Orleans for medical treatment and there he met a very young and beautiful lady, Margaret Lea of Marion, Alabama. It was to be nearly 4 years before they were married in the Baptist Church in Marion.

The negotiations to get Texas into the Union were started by a number of friends of Houston. The north was not anxious to see this because slavery existed in Texas and they did not want to see the institution spread. Many of the farmers and first settlers in Texas came from slave states and brought their slaves with them to farm the new land. The negotiations continued and finally Texas was admitted - but under special conditions. She was to continue to own the open land and also because of her size could in the future vote to become up to four states.

Sam Houston had served two terms as President of the Texas Republic, and when it became a state he was one of the first to be elected to the United States Senate. He was to serve as a Union Democrat member from 1846 to 1859. On many issues he was at odds with others from the south as he did not want to see separation of the South from the Union.

Opposition in the Texas Legislature was strong and Houston was defeated for reelection to the Senate in 1859. Houston returned home to Texas and was again elected by the people as Governor of the State this same year. The Civil War was about to start and there were many and confusing things going on. The commander of all the U.S. troops in

Texas was to leave and certainly a void was to exist. The Texas Legislature passed an act that all elected officials would be required to take an oath of allegiance to the Confederacy. This Houston refused to do and he was deposed from his office of Governor of the State.

This was certainly a sad end for this wonderful old man. Picking up the things that he had at the Capital in Austin he returned to his family establishment at Huntsville. Here he was to live two more years with his beloved wife and their eight children. Death was to come quietly on July 26, 1864 - he was 71 years of age.

Henry Steel Commanger, the Historian, wrote of Houston: "The story of Sam Houston is too good to be true. This man wrought such mighty deeds within his lifetime that had he not existed we would have had to create him. It would be absurd to insist that he was a typical American, but it is no exaggeration to say he symbolized the most dramatic qualities of the American character of the mid-nineteenth century. He was a combination of the primitive and the sophisticate, which always delighted the European observer and has never embarrassed the American. He was a school teacher and a lawyer, but he was also a hunter and a fighter. He was equally at home in a courtroom or the Halls of Congress, an Indian teepee or a military tent. He served the history of Texas in the same way as Charlemagne and Alfred and Barbarossa served the histories of the nations they helped to make."

This is the story of Another Raven that passed along our way.

The Literary Club

Cincinnati, Ohio

October 19, 1987

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LENGTHENING SHADOWS

The Constitution Enters Its Third Century

Hon. John W Peck
Senior Judge
U.S. Court of Appeals
Sixth Circuit

I was first invited to participate in this evening's program sometime in the far distant past. Like many of you, I am sure, I never hesitate to accept an invitation to do anything that far in advance, because I am always sure that the world will come to an end or that some other cataclysmic event will intervene. That circumstance, plus the prestigious nature of this occasion, prompted me to accept with alacrity.

One thing I never seem to have learned, however, is that no matter how far off the fatal day may appear to be, it eventually arrives, and ten days ago I suddenly realized that the big day was nigh upon me.

In the months since I was first honored by your invitation to speak on the Constitution, that document has been the subject of almost constant public attention as it moves into its third century. Promising prospects have abounded for a talk which would be of interest to this sophisticated audience in such areas as First and other Amendment rights, issues arising under the Commerce Clause and a host of others, and then there is always the fascinating history of the drafting and execution of the Great Charter itself. However, all of you, like everyone else in the country, have been deluged by the saturation coverage which has been given to all of these subjects. Topic after topic which I had considered for tonight became the basis of Sunday supplement articles, weekly magazine stories, and special editions of other periodicals, to say nothing of television extravaganzas. The thought of competing with the masterpieces which have been laid before you by scholarly staffs backed by limitless research was intimidating.

However, another possibility began to emerge. Even as the ever-lengthening shadows of the Constitution continue to spread into and affect various aspects of our national life and culture, rather shockingly the specter of a Second Constitutional Convention has begun to get more than peripheral attention. It is that possibility to which I would like to return in a few minutes.

I have already referred to the Constitution as "the Great Charter," and it is commonplace to use superlatives in referring to our guiding document. For instance, it is said to have been drafted by "the most brilliant committee of men ever assembled." From cradle to grave, our lives are controlled by statutes and ordinances, rules and regulations,

fiats and resolutions - but basically and fundamentally, underlying all else, there is always the Constitution.

One is reminded of the story of the vessel proceeding through a dense fog which received the radio message, "Change course." The ship wired back, "This is a military vessel. Change course." The response was, "Change course." Becoming irritated, the ship wired, "This is a vessel of the United States Navy! Change course!" Again came the simple response, "Change course." By this time the head man himself had had enough and he wired, "This is Admiral Schmaltz of the United States Navy, and this is the Aircraft Carrier 'Mudville!' Change course." This time the response that came back was, "This is the lighthouse. Change course!"

Similarly, ordinances and statutes and such may or may not be subject to attack and debate, but when you are on a collision course with the Constitution, you will be well advised to "Change course." The fact remains that in all areas in which it has spoken with clarity, the Constitution has laid down the absolute, unalterable law of the land.

This is not to say, of course, that even the wisdom of the Founding Fathers enabled them to forecast with accuracy the expanding scientific and cultural developments which have occurred, and which will continue to unfold with each passing year. Whether in terms of millenniums or simply decades, evolution has not been limited to the improvement of the species. Modes and means and customs of transportation, communication, habitation, protection from the elements, virtually all aspects of our lives, continue to be the subject of evolution. This manuscript, for instance, is the product of a mysterious machine called a word processor, which to my constant astonishment, insists on typing both frontwards and backwards. The typewriter, itself revolutionary not so very far back, will soon be gathering dust with the hand operated butter churn. In such a world, would it not be fatuous to suppose that in the stifling heat of that sealed room in Philadelphia in 1787, 55 men, wise though they were, could have foreseen such universal transitions?

Recognizing the impossibility of exercising such foresight, when they emerged on September 17th they presented a document which embodied not only wisdom, but also great elasticity and flexibility. Flexibility so that the words of the Constitution could be turned to follow the courses of changing currents of thought, elasticity so that provisions could be stretched to accommodate developments not yet conceived. Examples of this flexibility and elasticity can be found in nearly every provision of the Constitution, but reference to three will suffice.

The first involves the criminal law, and is perhaps the most readily understood. The barbarities of other cultures apart, the framers of the Constitution were aware of the fact that a bare 20 years earlier Blackstone had noted in his "Commentaries" that for the crime of treason an Englishman might be dragged to the gallows, hung, cut down, disemboweled

while still living and finally put to death by decapitation and quartering. In that same year, 1769, Thomas Jefferson himself advocated the castration of any man found guilty of rape, polygamy or sodomy and the facial mutilation of any woman found guilty of a comparable offense. Public hangings, floggings and the cropping off of ears were punishments in common practice at that time. Against such a backdrop, isn't it safe to assume that when the Eighth Amendment proscribed "cruel and unusual punishment" violence to the person was contemplated?

Nevertheless, in contemporary times far less painless procedures than these corporal punishments have been held to be cruel and unusual. As a local example, our ancient Workhouse, long known as the "Colerain Chalet," came into being long after the adoption of the Constitution. Indeed, in its early days it may have provided a night's lodging not greatly inferior to those available at the inns of colonial times. Yet, as we all know, that venerable bastille has been vacated by a court order based on the finding that confinement there constituted cruel and unusual punishment. Similarly, the Supreme Court affirmed a finding that filthy conditions, confinement in eight by ten foot cells, and the serving of unpalatable food could constitute cruel and unusual punishment when prolonged over an extended period of time. As a further expansion, the Supreme Court in 1976 approved the finding that deliberate indifference on the part of prison officials to the medical needs of a prisoner also violated the 8th Amendment.

Perhaps the most widely known of all Constitutional rights is the individual's immunity from self-incrimination under the 5th Amendment. This principle had been entrenched in the common law of England, which had held since about 1700 that no man was bound to incriminate himself on any charge in court.

Probably the most far-reaching American expansion of this principle resulted from the famous case of *Miranda v. Arizona*. Actually, all this case did was to modify a rule of evidence which had theretofore permitted the prosecution to introduce into evidence nearly any inculpatory statement made by a defendant. That 1966 case rewrote criminal arrest procedures, and engendered other far-reaching consequences. This pronouncement of the "Warren Court" has been widely debated, and may well be the subject of some modification in the near future. However, one thing remains clear. *Miranda v. Arizona* and its progeny surely go further than could have been envisioned when the Fifth Amendment was adopted.

The second provision of the Constitution which I would touch on lightly is one which has cast shadows in many directions, and in intricate and lacy patterns. It is generally referred to as the "Commerce Clause," and when read in its entirety grants Congress the power "To regulate Commerce with foreign Nations, and among the several states, and with the Indian Tribes." From that dozen words, excluding the business about the Indians, come the myriad powers under which Congress has assumed the regulation of

everything from migratory birds to stocks and bonds, from electronic media transmissions to transportation of stolen automobiles or women across state lines for immoral purposes, just to mention a few.

Because sooner or later every single person in the United States rides a bus, railroad train, or airplane or buys or consumes goods which have been transported by them, or takes a pill or some other medication dispensed on the national market, or seeks beautification from the cosmetic shelves, or buys or sells stocks or bonds or some other form of security, or does any of a thousand other things, he is doing something that is controlled under the Commerce Clause through the Interstate Commerce Commission, the Food and Drug Administration, the Securities and Exchange Commission, or one of another dozen or so agencies.

The only other area which I have time to mention is one which has received an abundance of prominence in recent times, and it has been the subject of intense controversy. In-deed, because some sought to place a Menorah on Fountain Square during the recent Holidays, the First Amendment was for a time in the daily news right here in the Queen City. The clause of the First Amendment which precludes nativity scenes on public property, prayers in public schools and a host of other things, is contained in these few words: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." This clause has also been the source of another whole body of law concerning such things as the rights of employees who observe a Sabbath on a day other than Sunday, and those of inmates of penal institutions whose religions mandate long hair and beards.

The next cryptic clause of the First Amendment proscribes legislation "abridging the freedom of speech, or of the press." These nine words do many things. In effect, they permit much of what is generally regarded as pornography, because a satisfactory definition of obscenity has been illusive. Absent such a definition, virtually all expression, and much conduct, is permitted as "free speech." As in other areas, hundreds of thousands of words in scholarly treatises and judicial opinions have been penned in attempts to give vitality to these two short provisions of the First Amendment.

My title this evening was occasioned by the picture of a tree that arose in my mind's eye in which the Constitution formed the trunk, while legislative enactments and regulatory promulgations formed the branches and twigs. Thus the trunk was of the sturdiest proportions, bearing as it must long and tall branches. This trunk cast a straight and ever-lengthening shadow indicative of the shape of our central government. A generally cautious judiciary has permitted the growth of a system of branches and twigs, casting in their turn an ever widening mosaic of shadows. The very magnitude of this growth, it seems to me, negates the need for further amendment of our basic document.

Had the tree been of other proportions, with a trunk of high girth and height blueprinting in detail all of the dos and don'ts of governmental control, and thus holding the number of branches and twigs' to a minimum, certainly amendments would be the order of the day, nearly every day. A writer to the Enquirer stressed this point only yesterday by complaining that his copy of the Constitution didn't mention anything about three co-equal branches of government nor many of the rights mentioned this evening.

Instead of a detailing document, we have a living, malleable constitution , and some may be surprised to learn that a constitutional convention is very much in the minds of many. For example, I have on my desk a published monograph prepared by a prestigious board and extending over some 75 pages, designed for guidance if a Second Constitutional Convention is convened. And I hasten to say that this particular document is not an isolated voice in the wilderness. The obvious question which immediately arises is, who wants what changes?

The answer is that those who at the moment most loudly clamor for a Constitutional Convention are among those who are alarmed at the dramatic and frightening escalation of the national deficit, but have no confidence in the legislature to cause reductions.

The startling fact is that 32 of the States of the Union have petitioned for a Constitutional Convention, and only 34 are required to put the Congress under an obligation to call a convention. One student of the situation has observed, "With only two more states needed to petition Congress to call a Constitution under Article V of the Constitution, and with Congress apparently unable or unwilling to discipline itself to a balanced budget, it is not unrealistic to anticipate the petition of two more states in the near future."

We look first at the Alabama petition, both because it leads the list alphabetically and because the first clause of its preamble is substantially identical to that of many of the other petitions. That clause reads:

"[W]ith each passing year this Nation becomes more deeply in debt as its expenditures grossly and repeatedly exceed available revenues, so that the public debt now exceeds hundreds of billions of dollars."

As you have doubtless surmised from the tenor of the preambles, these petitions do not request a Constitutional Convention for general revisionary purposes. Rather, the convention they seek would convene for the stated purpose of adding Article XXVII to the Constitution, which would require a balanced budget . A laudable objective, I can almost hear you saying, but who is to say that, once convened, a convention would remain within the limits of its mandate? Although he favored a Constitutional Convention for a variant purpose, even Senator Jesse Helms recognized that the risk of a "run-away" Convention

existed, to which the safeguard of the ratification process is not a sufficient answer. It should always be kept in mind that the Constitutional Convention of 1787, which far exceeded its mandate of revising the Articles of Confederation, was itself a "run-away Convention."

The only sure way to avoid that risk is to refrain from calling a Second Constitutional Convention, and the clear path to that goal is by inducing the Congress to balance the budget. Each of us should make every effort to urge his senators and his congressmen to give the highest priority to the goal of a balanced budget.

However, our morning newspaper earlier this week suggested an alternative method of achieving this goal. It editorially urged that in scanning the fields of presidential candidates care should be taken to select those dedicated to a reduction of the deficit. The last presidential candidate who pledged himself to that end went on to a landslide defeat, but perhaps 1988 voters are wiser.

Only if our elected representatives and chief executive can be made to realize that the bulk of the electorate want the deficit reduced can that result be achieved. So convinced, they will act. In that way only can we avoid the risk, not to say the perils, of creating a Frankenstein monster in the form of a Convention with the ability to undo two centuries of painstaking expansion and implementation of the "wisest document ever produced by the minds of man. "Far better we should permit the Constitution to enter its Third Century in pristine form.

Wholesale amendment of the Constitution of the United States would accomplish a drastic pruning of the trunk, branches and twigs which cast ever-lengthening shadows symbolic of good government, and of that most basic of all aims, the pursuit of happiness.

Winter Court
Society of Colonial Wars in the State of Ohio
Queen City Club, Cincinnati, Ohio
January 8, 1988