

SUPREME COURT HISTORICAL SOCIETY

MINUTES

February 6, 2007

President Wes Horton called the meeting to order at 2:05 PM. Board members and committee chairs present included Chuck Howard, Tom Groark, Greg D'Auria, Barbara Heck, John Farley, Michael Shea, and Justice Zarella (ex officio). Dan Rogers was also present.

Mr. Howard moved the approval of the minutes of the Board of Directors meeting of December 5, 2006. The minutes were unanimously approved.

Mr. Groark reported that the Society has approximately \$13,570 in its bank account, after payment of the publisher's bill for the first edition of the Connecticut Supreme Court History and the advertisements in the Connecticut Law Tribune. He also reported that we have received \$1100 for dues renewals, representing 22 people. A subsequent discussion revealed that the dues renewals were enclosed with the mailing of the journal, but that since the journal had been mailed third class mail, many members probably had not yet received it or the renewal notice. Mr. Howard moved that a letter from Mr. Horton be sent to members after it is likely that they have received the journal, reminding them to renew their membership. Mr. Groark seconded the motion, and it carried unanimously.

Mr. Rogers was recognized to address the board on behalf of a planning committee for a conference, "The Connecticut Constitution of 1818 and Beyond," scheduled for November 3, 2007 sponsored by the Association for the Study of Connecticut History. A report on the conference is attached. Mr. Horton advised Mr. Rogers that the Connecticut Bar Journal had published the annotated minutes of the 1818 Constitutional Convention in the January 1991 issue. He also suggested that Mr. Rogers contact Mr. Besso concerning papers that may be presented at the conference, and he agreed to give opening remarks at the conference. On a motion made by Mr. Howard and seconded by Mr. Groark, the board agreed to co-sponsor the conference and authorized Mr. Horton or Mr. Collier to sign a grant application for the conference to the Connecticut Humanities Council on behalf of the Society as a co-sponsor.

Mr. Besso was unable to be present, but his report is attached. Mr. Horton described the work of the Publications Committee in producing the first edition of the Connecticut Supreme Court History as "outstanding" and "terrific." Mr. Howard moved, and Mr. D'Auria seconded, a motion to express the board's appreciation for the great work of the committee. The motion carried unanimously. In response to a question over whether the full publication bill had been paid, Mr. Groark indicated that

he would make sure that the bill was fully paid. On the question of what to do with the extra copies of the journal, Mr. Farley indicated that he would like to have some to send to the managing partners of firms that contributed and to those at firms that have not yet contributed. Mr. Shea requested copies to send to our Annual Dinner speaker last year (Professor Amar) and our speaker this year, Seth Waxman. Mr. Howard suggested that a copy be signed by the Society's board members and committee chairs for archival purposes. Those present signed a copy with the expectation that the remaining signatures would be obtained at the next board meeting. After all signatures are obtained, it will be added to the archives of the Society. Ms. Heck requested approximately twenty copies for archival purposes.

The board discussed what parts of the journal, if any, to post on the website. It was agreed that Mr. D'Auria discuss with Mr. Besso what was appropriate for inclusion on the website, with the understanding that it would be limited to such matters as introductory comments and the index and not include the full text of the articles.

Mr. D'Auria reported that he, Jon Weiner and Mike Taylor had had discussions of how to enhance the content of the material on the website. They have agreed to devote a page to each of the Society's committees and have requested the committee chairs to report on their committee's meetings. The board agreed that Mr. D'Auria would have editorial control over what is posted. At the suggestion of Mr. Rogers, Mr. D'Auria agreed to post the call for papers for the November conference. Mr. Shea suggested that the website include information on each of the Court's Chief Justices or have a reference to other sources of information on them.

Mr. D'Auria also reported that he had been in discussions with Todd Brewster, who had received a legislative appropriation for programs on the U.S. Constitution from the General Assembly. There may be a possibility for co-sponsoring an event, play or a debate, but more information will be reported after further discussions.

Mr. Horton reported on a request from Mr. Besso that the Publications Committee's name be changed to Board of Editors. On a motion made by Mr. Howard and seconded by Mr. D'Auria, the board agreed to authorize the committee to refer to themselves in the journal as the Board of Editors, but that they would remain the Publications Committee of the board.

Mr. Horton presented Justice Zarella with Chief Justice Maltbie's Charge Book for the Society's archives.

Mr. Farley reported on the Membership Committee's activities. This includes trying to get more information on former Supreme Court Clerks and getting more of them to join. Likewise, he will be contacting lawyers who describe themselves as appellate practitioners. Now that the journal has been printed, he will be following up with membership renewal efforts. Mr. Howard suggested that contacting firms to

purchase tables for the Annual Dinner, with the expectation that it would include a membership or two, might be an idea his committee could explore. Mr. Farley said that his committee is still looking for ways to bring in more non-lawyer members. Mr. Farley will prepare a letter for Mr. Horton's signature to go to the law firms and Mr. Shea will supply him with information about Mr. Waxman to include in the letter.

Mr. Shea reported on plans for the Annual Dinner. Arrangements have been made with the New Haven Lawn Club for the dinner on May 10, and depending on the turnout, either of two large rooms is available. His committee will place two ads in the Connecticut Law Tribune. After discussion, it was agreed that invitations will be sent by email, if available, by April 1. Mr. Zarella will contact CTN or will make arrangements for the videotaping of the presentation. Mr. Shea will also contact reporters for The Hartford Courant and the Connecticut Law Tribune. Notices will be sent to all law school deans and announced at the Connecticut Appellate Institute.

Ms. Heck reminded all board members and committee chairs of her earlier email looking for archival material for preservation.

Mr. Horton appointed Mr. D'Auria and Mr. Collier to be a nominating committee for the board member positions currently held by Mr. Howard and Mr. Groark.

Mr. Horton reported that the 200th anniversary of the Connecticut Supreme Court is June, 2008. See the attached copies of a page from the Supreme Court Reports, showing the membership of the court in June, 1807, and the Public Acts of 1808. Mr. Horton volunteered to find out when in June, 1808 the term began so that the Program Committee can begin to think about what would be a proper celebration. Mr. Horton also reported that he had entered into a contract with West Publishing to publish a book within the next year on the history of the Connecticut Supreme Court.

The next meeting of the board was set for 5:00 at the New Haven Lawn Club on May 10, 2007 (prior to the Annual Dinner).

There being no further business, the meeting was adjourned at 5:00 PM.

Respectfully submitted,

Charles L. Howard,
Secretary

REPORT ON NOVEMBER 3RD CONFERENCE

By Donald W. Rogers

(February 6, 2007)

1. The Association for the Study of Connecticut History (ASCH) will hold its annual 2007 fall convention on "**The Connecticut Constitution of 1818 and Beyond**" at the University of Connecticut School of Law on **Saturday, November 3, 2007**, with co-sponsorship by the Connecticut Supreme Court Historical Society and the law school.
2. It is my understanding that CSCHS has volunteered \$500 to contribute to the costs.
3. A planning committee (including me) met on January 10, 2007. It was reported that ASCH President Allen Ward is already making local arrangements with the law school.
4. The conference will revolve around edited works soon to be published by Douglas Arnold and Richard Buel on events surrounding the adoption of the 1818 Constitution. The conference agenda will likely include:
 - a. An opening welcome and plenary session featuring Arnold's and Buel's work.
 - b. Paper sessions throughout the rest of the morning and afternoon on the 1818 Constitution and other facets of Connecticut legal and constitutional history. (Panels will consist of a chair/introducer and two papers for ninety minutes, including audience participation.)
 - c. Possibly a lunch-time speaker (an issue still being batted around).
5. The collaborators expect an audience of 150-200+ consisting of teaching faculty, researchers, archivists, museum curators, and members of the legal community.
6. Registration will likely cost in the \$30-\$35 range with discounts for students.
7. The planning committee asked assistant to the State Historian (Walter Woodward) Kathleen Foley to broadcast the **call for papers**. (Attached.) To date, she has circulated it to at least eighteen Internet listservs, plus law schools, political science faculties, the New England Historical Association and others. ASCH will also circulate it among its own mailing list of about 1,500.
8. **The planning committee needs from CSCHS:**
 - a. Names of contacts to circulate the call for papers among the Connecticut legal

CALL FOR PAPERS

THE CONSTITUTION OF 1818 AND BEYOND

SATURDAY, NOVEMBER 3, 2007

The Association for the Study of Connecticut History (ASCH), the Connecticut Supreme Court Historical Society, and the University of Connecticut Law School are holding a one-day conference on Connecticut constitutional history to focus both on the State's first modern constitution of 1818 and on constitutional and legal history from the seventeenth to the twentieth centuries. The meeting will feature concurrent sessions by speakers from different backgrounds on a variety of subjects.

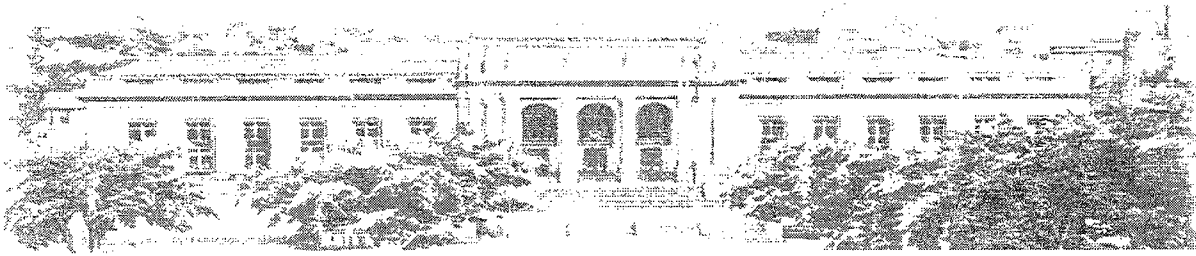
In 2007, significant works edited by Douglas Arnold and Richard Buel, Jr. on the debates concerning and events surrounding Connecticut's 1818 Constitution are being published. These books form the centerpiece for discussion of the significance of the 1818 Constitution in the constitutional history of Connecticut and constitutional and legal issues relating to this document and not anticipated by it.

Researchers are invited to submit proposals addressing specific aspects Connecticut's constitutional and legal history from the time of the Fundamental Orders and Charter of 1662 to the Constitution of 1965, including but not limited to issues like government under the Fundamental Orders and Charter, the reasons for a new constitution in 1818, disestablishment, amendments to the Constitution of 1818, the work of the Connecticut Supreme Court and other courts, voting rights and representation, and the social impact of constitutional and legal developments in 19th and 20th century Connecticut.

Those interested in participating should submit a title for the paper, an abstract of its contents, and a short c.v. to Bruce P. Stark, Connecticut State Library, 231 Capitol Avenue, Hartford, CT 06106 or e-mailed (in MSWord format) to: bstark@cslib.org

Application deadline is May 15, 2007.

Connecticut Supreme Court Historical Society



To: CSCHS Board of Directors
From: Michael Besso
Subject: Report from Board of Editors
Date: February 5, 2007

On behalf of the Board of Editors, I am happy to report the obvious: the 2006 volume of *Connecticut Supreme Court History* is now printed and available. The Board of Editors' target for distribution was mid-November, but for a variety of reasons -- outlined in my January 18, 2007, e-mail to Wes Horton and to the Board of Editors -- we missed the date by a couple of months.

I should first express to the Board of Directors the great appreciation I have for the Associate Editors who all worked together with me to ensure the production of the issue: Wystan Ackerman, Cynthia Barlow, Judge Tom Bishop, Ben Buckley, Vicky Canevari, Sheila Huddleston, Don Rogers, Joe Scully, and Colin Tait. I must add that, from this group, particularly notable -- and vitally essential -- contributions came from Vicky Canevari, Sheila Huddleston, Don Rogers, and Joe Scully.

I do not yet have a bill from Western Publishing, but I understand that it was sent to the Society care of Wes Horton's firm. The bill is in the \$2000+ range, I believe. This would be higher than our original estimate, but we did approve "add ons," such as the cover finish, the printing and bundling of the renewal notice, and some other items. I should review the invoice before the Society approves any payment.

The order was for 300 copies. Western Publishing mailed 120 copies to members directly; this mailing went third class (which is standard, rather than first class, as I had thought), but I hope that, by now, all members have received the issue. Western Publishing shipped the balance of the 300 to the Society. Of this balance, I have about 60 copies, of which I intend to distribute two copies each to named contributors to the issue (Urofsky; Peters; Collier) and an extra copy each to members of the Board of Editors. I would also like to send copies to some academically affiliated historians and political scientists in the state -- for example, at the University of Connecticut -- which might spark an interest among that group in our Society.

Regarding the many other copies, I understand that the Society will use them for a variety of purposes, including promotion of and recruitment for the Society. One target population for the journal is the system of various libraries across the state. I do not know how libraries operate, but I believe that we should attempt to have libraries accept, retain, and catalog the journal. This

would begin with the state library in Hartford, but could also include the University of Connecticut (in Storrs and at the law school), the constituents of the Connecticut State University system, and private institutions, such as Yale University, Wesleyan University, Trinity College, and Connecticut College. I recommend that some person, to be selected, work on this.

Internet-Based "Publication"

I recommend that the Board of Directors approve the posting of the journal, in modified format, on the Society's website. Practices vary greatly among journals regarding the format and extent of publishing journal content on the internet. Some journals post articles in their entirety; others post abstracts only; others simply post a table of contents. Because the Society expects to use the journal for recruitment purposes (among other uses), it is not appropriate to post the entire journal content on the Society website. It does seem appropriate, however, to post some content, which could impart to a reader the nature of the journal's substance and, ideally, generate an interest in the Society. Accordingly, for Volume 1, I recommend the following internet-based "publication":

- notice of Volume 1 (with link), available on Society's main web page;
- full table of contents;
- full content of the "inauguration of the society" essays by Urofsky and Peters;
- one-paragraph abstracts of the "essays, reports, and miscellanea" material by Collier and the Board (the *Synsbury* and 1806 essays).

NOTE: Regarding the Society's webpage, I request that the "publications committee" listing, on the membership page, be changed to "Board of Editors," with editor and associate editors listed as in Volume 1. In the alternative, the membership page can keep the "publications committee," but I would like to see the Board of Editors listed with the internet-based journal content.

Volume 2: 2007

The Board of Editors has not yet begun its work for Volume 2. The 2007 conference on the 1818 constitution, sponsored jointly by CSCHS and ASCH (Association for the Study of Connecticut History) will likely generate an article or two -- or so I hope. Because that conference will feature the publication of the 1817 and 1818 volumes of the official Connecticut Records, I will ask the editor of those volumes (Doug Arnold) to contribute a small essay about his findings regarding the Connecticut Supreme Court. We will also publish at least one more in-depth study of a Connecticut Supreme Court case from the court's history. One suggestion is the state court's decision in *Calder v. Bull* (1796), which later went to the United States Supreme Court. The decision in the latter court became a much-studied case on the role of natural law in American jurisprudence. A study of the Connecticut decision would likely prove very interesting. The Board of Editors are open, certainly, to any additional suggestions for publishable material.

In trials before single ministers of the law, in this state, the issue has usually been joined *ore tenus*, and appears only in the *postea*. Among the frequent exceptions, which have been taken to the judgments of our magistrates, was it ever supposed, that they were erroneous for this cause? Upon the general issue, in criminal cases, the *similitur* is never added, in our practice: Are all our judgments, in criminal cases, erroneous?

The objection, that the motion in arrest of judgment is not answered, cannot be supported, either upon principle, or authority. No rule requires, that it should be answered. A train of special pleadings upon a motion, would be a novelty in judicial proceedings. The English forms (3 Black. Com. App. No. II, § 4) as well as our own, are decisive of the question.

By the Court. The judgment was affirmed.

THE SUPREME COURT OF ERRORS,

HOLDEN AT NEW HAVEN IN JUNE, 1807,

CONSISTED OF

His Excellency JONATHAN TRUMBULL, *Governor*.

HIS HONOR JOHN TREADWELL, *Lieutenant-Governor*.

Assistants,

Hon. OLIVER ELSWORTH, Hon. JONATHAN BRACE,

Hon. WILLIAM HILLHOUSE, Hon. CHAUNCEY GOODRICH.

Hon. JOHN CHESTER, Hon. ELIZUR GOODRICH,

Hon. ROGER NEWBERRY, Hon. MATTHEW GRISWOLD,

Hon. ASHER MILLER, Hon. STEPHEN T. HOSMER, and

Hon. AARON AUSTIN, Hon. HENRY CHAMPION.

OWEN V. MANN.

In the court below,— David Owen v. Andrew Mann.

In an action of ejectment, the defendant claimed title to the demanded premises under B. to whom he had given his note for the purchase money. B. had indorsed this note to C. who, after the suit was commenced, applied to the defendant for payment, which was made under an agreement, that C. should retain the note, and if judgment should be rendered against the defendant, should refund the money, and resort to B. on the indorsement. B. it appeared, was a man of property. Held, that C. thus situated, was so far interested in the event of the suit, as to render him an incompetent witness for the defendant.

This was an action of ejectment.

On trial to the jury, under the general issue, the defendant claimed title to the land in question by virtue of a convey-

 Edwards v. Nichols.

would be restricted in his proof, if the declaration were more special.

2. The plaintiff and defendant are well described as citizens of the states of New York and Connecticut. The plaintiff is alleged to be a citizen of the district of New York, and the defendant a citizen of the district of Connecticut. By the act of Congress to establish the judicial courts of the United States (Vol. 1, U. S. Laws, 48,) the United States are divided into districts; and the states of New York and Connecticut are respectively constituted districts of the same name. The same territorial limits, as well as the same body politic are, therefore, described by the terms district of Connecticut, as if the word state had been used. The district and state of Connecticut are synonymous and coextensive, and the parties are described as citizens of the states of New York and Connecticut, by language perfectly definite and certain.

LIVINGSTON, J., overruled the motion in arrest, and ordered judgment to be entered.

CASES ARGUED AND DETERMINED
IN THE
SUPREME COURT OF ERRORS,

AND BEFORE THE
NINE JUDGES OF THE SUPERIOR COURT

OF
THE STATE OF CONNECTICUT,

AT
HARTFORD, IN JUNE, 1808.

The present organization of the Supreme Court of Errors, and of the Superior Court of the State of Connecticut, was established, by an act of the Legislature, in May, 1806. (Stat. Conn., tit. XIII, chap. 14.) It is summarily as follows:

The Superior Court consists of one chief judge, and eight assistant judges, who annually divide themselves into three branches; and the several counties in the state being divided into three circuits; one branch is assigned to each circuit. In all the counties, a Circuit Court is held twice, and in one county, three times a year. This court has civil, criminal, and chancery jurisdiction; and, in its several capacities, determines, by the aid of a jury, auditors, referees, or com-

S. J. Wilcox, 1860

THE PUBLIC

Statute Laws

OF THE STATE OF

CONNECTICUT.

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BOOK I.

PUBLISHED BY AUTHORITY OF THE GENERAL ASSEMBLY.



HARTFORD:

PRINTED BY HUDSON AND GOODWIN.

1808.

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CHAP. XIII.

An Act in addition to an Act, entitled, "An Act for constituting and regulating Courts, and appointing the times and places for holding the same."

[Enacted in October, 1804.]

Reasons of the supreme court of errors to be recorded, &c.

BE it enacted by the Governour and Council and House of Representatives in General Court assembled, That the reasons which shall be assigned by the supreme court of errors on the reversal of a judgment or decree of the superior court, shall be recorded by the clerk of the supreme court of errors in a book to be kept for that purpose, and such clerk shall afterwards deliver to one of the judges presiding in the circuits of the superior court, the originals of said reasons; and to the other of the judges presiding in said circuits a certified copy thereof for the use of the judges of said court.

CHAP. XIV.

An Act in further addition to and alteration of an Act for constituting and regulating Courts and appointing the times and places for holding the same.

[Enacted in May, 1806.]

Superior court to consist of nine judges after next session of the assembly.

§ 1. BE it enacted by the Governour and Council and House of Representatives in General Court assembled, That from and after the session of the general assembly, which shall be held on the second Thursday of October next, the superior court of this state shall consist of a chief judge and eight assistant judges, to be appointed and commissioned for that purpose.

Three circuits. Of what counties to consist.

§ 2. Be it further enacted, That there shall be three circuits, wherein the sessions of said court shall be held.—One of the circuits to consist of the counties of Hartford, New-Haven, and Middlesex; another to consist of the counties of Fairfield and Litchfield; and the other to consist of the counties of New-London, Windham, and Tolland; and there shall be two sessions of said court in each of said counties, to be held annually, except in the county of Hartford, in which there shall be three sessions of said court to be holden annually; by any three of said judges, who shall have and exercise all the powers, and authorities, with which the superior court of this state is by law vested.

Number of sessions.

To be held by three judges.

Processes to be entered.

§ 3. Be it further enacted, That all appeals, petitions, writs of error, and other processes, before said superior court, may be brought forward and entered at any session of said court, in manner and form, as by law is already provided, and that it

S. J. Adams, 1850

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