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Remarks, Investiture of Hon. Thomas J. McAvoy

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ROGER J. MINER
U.S. CIRCUIT JUDGE
SECOND CIRCUIT COURT OF APPEALS

THE NEW YORK PATENT, TRADEMARK
AND COPYRIGHT LAW ASSOCIATION
WALDORF-ASTORIA HOTEL
MARCH 21, 1986

I WAS DEEPLY HONORED BY YOUR PRESIDENT'S INVITATION TO ADDRESS THIS SIXTY-FOURTH ANNUAL DINNER OF THE NEW YORK PATENT, TRADEMARK AND COPYRIGHT LAW ASSOCIATION. ALTHOUGH WE SECOND CIRCUIT JUDGES NO LONGER ARE OCCUPIED WITH APPEALS IN PATENT CASES, TRADEMARK AND COPYRIGHT MATTERS DO APPEAR ON OUR CALENDARS WITH SOME FREQUENCY. IT IS THEREFORE A SPECIAL PLEASURE TO SEE HERE TONIGHT SO MANY OF THE DISTINGUISHED LAWYERS WHO REGULARLY ARGUE THOSE MATTERS BEFORE US. DURING MY BRIEF TENURE AS A COURT OF APPEALS JUDGE, I HAVE OBSERVED A HIGH DEGREE OF PROFESSIONALISM IN THE SUCCINCT BRIEFS AND COGENT ARGUMENTS GENERALLY PRESENTED IN TRADEMARK AND COPYRIGHT CASES. WOULD THAT

THIS WERE SO IN SOME OF THE OTHER TYPES OF CASES THAT REQUIRE OUR ATTENTION!

IN MY EARLY DAYS AT THE BAR, YOUR SPECIAL AREA OF PRACTICE WAS ALMOST ENTIRELY UNKNOWN TO ME. ACTUALLY, MOST AREAS OF PRACTICE WERE THEN UNKNOWN TO ME. NEVERTHELESS, AS A YOUNG LAWYER AND CANDIDATE FOR PUBLIC OFFICE IN A RURAL UPSTATE COUNTY, VARIOUS ORGANIZATIONS FELT FREE TO CALL UPON ME FROM TIME TO TIME TO COMMENT ON LEGAL TOPICS OF INTEREST TO THEM. I REMEMBER ONE OCCASION WHEN I SERVED AS THE SPEAKER AT THE ANNUAL DINNER OF A LOCAL VOLUNTEER FIRE COMPANY. WHEN THE OLD-TIMER SEATED NEXT TO ME AT THE HEAD TABLE ASKED WHY I ATE NOTHING DURING THE MEAL, I REPLIED THAT I NEVER ATE BEFORE GIVING A SPEECH. AFTER I COMPLETED MY ADDRESS, HE LEANED OVER TO THE MAN NEXT TO HIM AND SAID: "HE SHOULD HAVE ET." OUTSIDE THE MEETING-HALL, THE OLD-TIMER WAS MET BY HIS WIFE, WHO ASKED, "WHAT DID THAT YOUNG LAWYER TALK ABOUT?" "HE DIDN'T SAY," WAS THE ANSWER. ON ANOTHER

OCCASION, AS I WAS SPEAKING AT SOME LENGTH ON A TOPIC OF INTEREST TO THE FARMING COMMUNITY, I HEARD ONE MEMBER OF THE AUDIENCE SAY TO ANOTHER: "WHAT FOLLOWS THIS SPEAKER?" "TOMORROW," WAS THE REPLY. SOME OF MY OTHER EXPERIENCES WERE EVEN MORE DISCOURAGING. A TOASTMASTER ONCE SAID TO ME AFTER THE MEAL WAS SERVED, "SHALL WE HAVE YOUR TALK NOW OR SHALL WE LET THE PEOPLE ENJOY THEMSELVES A LITTLE LONGER?" I ONCE ASKED THE OWNER OF A DAIRY HERD WHAT HE THOUGHT OF ONE OF MY SPEECHES. HE SAID IT REMINDED HIM OF THE HORNS OF A STEER -- A POINT HERE, A POINT THERE, AND A LOT OF BULL IN BETWEEN. THE MOST TELLING BLOW OF ALL CAME WHEN I ASKED ONE OF MY COUNTRY CLIENTS WHETHER HE HAD HEARD MY LAST SPEECH. HE SAID: "I CERTAINLY HOPE SO." IN MY DISCOURSE TONIGHT, I PROMISE TO BE MINDFUL OF THOSE EARLY EXPERIENCES AND TO BE GUIDED BY THAT OLD RURAL PROVERB: "A CLOSED MOUTH CATCHES NO FLIES."

I TAKE THIS OCCASION TO SPEAK TO YOU OF THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION AND OF SOME CONSTITUTIONAL HISTORY.

IN THE COURSE OF MY DISCUSSION, I SHALL TELL THE TRUE STORY OF HOW THE PATENT AND COPYRIGHT CLAUSE CAME TO BE A PART OF OUR NATIONAL CHARTER.

TO PROMOTE AND COORDINATE ACTIVITIES COMMEMORATING THE FRAMING OF THE CONSTITUTION IN 1787, CONGRESS HAS ESTABLISHED THE COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION. THE TWENTY-THREE MEMBER COMMISSION IS CHAIRED BY THE CHIEF JUSTICE OF THE UNITED STATES, WHO HAS SAID THAT THE BICENTENNIAL "AFFORDS A RICH OPPORTUNITY FOR A HISTORY AND CIVICS LESSON FOR ALL OF US." IN ITS FIRST REPORT, THE COMMISSION SAID THAT IT "REGARDS THE APPROACHING COMMEMORATION AS AN HISTORIC OPPORTUNITY FOR ALL AMERICANS TO LEARN ABOUT AND RECALL THE ACHIEVEMENTS OF OUR FOUNDERS AND THE KNOWLEDGE AND EXPERIENCE THAT INSPIRED THEM, THE NATURE OF THE GOVERNMENT THEY ESTABLISHED, ITS ORIGINS, ITS CHARACTER, AND ITS ENDS, AND THE RIGHTS AND PRIVILEGES OF CITIZENSHIP, AS WELL AS ITS ATTENDANT REPONSIBILITIES." THUS,

THE CONGRESS, THE COMMISSION AND THE CHIEF JUSTICE ALL HAVE MADE CLEAR THAT THE PRIMARY EMPHASIS OF BICENTENNIAL CELEBRATIONS SHOULD BE ON EDUCATIONAL PROGRAMS. TO THIS END, THE COMMISSION HAS CALLED FOR "THE WIDESPREAD AND ENTHUSIASTIC INVOLVEMENT OF PRIVATE GROUPS AND ORGANIZATIONS TO ENLARGE UNDERSTANDING AND APPRECIATION OF THE CONSTITUTION OF THE UNITED STATES."

IN THIS SPIRIT, I SUGGEST THAT YOUR ASSOCIATION, WHICH WILL BE CELEBRATING ITS OWN SIXTY-FIFTH YEAR OF EXISTENCE DURING THE BICENTENNIAL, HAS A UNIQUE OPPORTUNITY TO MAKE SOME IMPORTANT CONTRIBUTIONS TO THE CELEBRATION. THE CONCEPT OF PROTECTION OF INTELLECTUAL PROPERTY IS, OF COURSE, RECOGNIZED IN THE CONSTITUTION. HOW THAT CONCEPT CAME TO BE ADOPTED AS PART OF OUR NATIONAL CHARTER, ITS IMPORTANCE TO THE NATION DURING THE PAST TWO HUNDRED YEARS AND ITS SIGNIFICANCE TODAY ARE MATTERS OF GREAT INTEREST TO YOUR FELLOW CITIZENS. WHO ARE BETTER EQUIPPED TO DEVELOP PROGRAMS, PUBLICATIONS AND EXHIBITS BEARING ON THIS

NOTEWORTHY THEME THAN THE MEMBERS OF THIS ASSOCIATION? I URGE YOU TO PARTICIPATE, INDIVIDUALLY AND AS MEMBERS OF THIS ORGANIZATION, IN CELEBRATING THE BICENTENNIAL OF WHAT HAS BEEN CALLED "THE GREATEST DOCUMENT EVER STRUCK OFF BY THE MIND AND HAND OF MAN." I PREDICT THAT YOU WILL DERIVE GREAT SATISFACTION IN DRAWING UPON YOUR SPECIAL KNOWLEDGE TO TEACH YOUR FELLOW CITIZENS ABOUT AN IMPORTANT ASPECT OF THEIR CONSTITUTIONAL HERITAGE.

IN RECOGNITION OF THE MAJOR RESPONSIBILITIES I EXPECT THAT YOU WILL ASSUME IN THE BICENTENNIAL CELEBRATIONS, I SHALL REVIEW BRIEFLY WHAT IS KNOWN ABOUT THE ORIGINS OF THE PATENT CLAUSE. THEREAFTER, I SHALL SUPPLY YOU WITH SOME HISTORICAL INFORMATION HITHERTO UNKNOWN.

OF THE FIFTY-FIVE DELEGATES WHO MET AT PHILADELPHIA DURING THOSE SWELTERING SUMMER MONTHS IN 1787, TWO GENERALLY ARE CREDITED WITH AUTHORSHIP OF THE PATENT CLAUSE. CHARLES PINCKNEY

OF SOUTH CAROLINA, FORMERLY A MEMBER OF THE ENGLISH BAR AND, AS SUCH, UNDOUBTEDLY FAMILIAR WITH THE COMMON LAW OF PATENTS AND COPYRIGHTS ACCORDING TO BLACKSTONE, PROPOSED ON AUGUST 18, 1787 THAT CONGRESS BE GIVEN THE POWER: "TO GRANT PATENTS FOR USEFUL INVENTIONS" AND "TO SECURE TO AUTHORS EXCLUSIVE RIGHTS FOR A CERTAIN TIME." ON THE SAME DATE, JAMES MADISON OF VIRGINIA, OFTEN REFERRED TO AS THE "FATHER OF THE CONSTITUTION," AND THE REPRESENTATIVE OF A STATE ALREADY PROVIDING COPYRIGHT AND PATENT PROTECTIONS, SUBMITTED PROPOSALS EMPOWERING CONGRESS: "TO ENCOURAGE BY PREMIUMS AND PROVISIONS, THE ADVANCE OF USEFUL KNOWLEDGE AND DISCOVERIES" AND "TO SECURE TO LITERARY AUTHORS THEIR COPYRIGHTS FOR A LIMITED TIME."

ACCORDING TO LEGEND, THE MEMBERS OF THE CONSTITUTIONAL CONVENTION WERE IMPRESSED WITH THE NEED TO PROTECT INVENTORS WHEN THEY OBSERVED JOHN FITCH TEST HIS STEAMBOAT ON THE DELAWARE RIVER DURING A BREAK IN THEIR SESSIONS ON THE AFTERNOON OF AUGUST 23,

1787. IN ANY EVENT, NO OPPOSITION WAS RECORDED WHEN THE CONVENTION'S COMMITTEE ON DETAIL PRESENTED ITS REPORT ON THE LANGUAGE TO BE USED IN PARAGRAPH 8 OF SECTION 8 OF ARTICLE I OF THE CONSTITUTION: "THE CONGRESS SHALL HAVE POWER . . . TO PROMOTE THE PROGRESS OF SCIENCE AND USEFUL ARTS, BY SECURING FOR LIMITED TIMES TO AUTHORS AND INVENTORS THE EXCLUSIVE RIGHT TO THEIR RESPECTIVE WRITINGS AND DISCOVERIES."

IN NO. 43 OF THE FEDERALIST PAPERS, JAMES MADISON WROTE: "THE UTILITY OF THIS POWER WILL SCARCELY BE QUESTIONED. THE COPYRIGHT OF AUTHORS HAS BEEN SOLEMNLY ADJUDGED IN GREAT BRITAIN TO BE A RIGHT OF COMMON LAW. THE RIGHT TO USEFUL INVENTIONS SEEMS WITH EQUAL REASON TO BELONG TO THE INVENTORS. THE PUBLIC GOOD FULLY COINCIDES IN BOTH CASES WITH THE CLAIMS OF INDIVIDUALS. THE STATES CANNOT SEPARATELY MAKE EFFECTUAL PROVISIONS FOR EITHER OF THE CASES, AND MOST OF THEM HAVE ANTICIPATED THE DECISION OF THIS POINT BY LAWS PASSED AT THE INSTANCE OF CONGRESS."

THE PROCEEDINGS OF THE CONVENTION WERE CONDUCTED IN SECRET AND WHAT WE KNOW OF THEM COMES TO US LARGELY THROUGH THE DIARY OF MADISON, WHO TOOK DAILY NOTES FOR HIS OWN USE. THE OFFICIAL SECRETARY OF THE CONVENTION WAS WILLIAM JACKSON OF GEORGIA, BUT HIS JOURNAL WAS VERY MEAGER. SOME NOTES ALSO WERE TAKEN BY ROBERT YATES, A NEW YORK DELEGATE WHO WAS PRESENT ONLY FOR THE FIRST HALF OF THE CONVENTION, AND BY VARIOUS OTHER DELEGATES, WHO ADDED SMALL CONTRIBUTIONS TO THE RECORD PASSED DOWN TO US.

THAT RECORD VERY RECENTLY WAS ENHANCED WHEN RESEARCHERS DISCOVERED, IN THE BASEMENT OF AN ANCIENT BUILDING IN PHILADELPHIA, A DIARY CHRONICLING CERTAIN EVENTS PERTAINING TO THE CONVENTION. THE GENERAL PUBLIC IS UNAWARE OF THIS DISCOVERY, WHICH I REVEAL HERE TONIGHT FOR THE FIRST TIME. APPARENTLY, THE AUTHOR OF THE DIARY WAS ONE B. ALEXANDER BLOODSHOT (B FOR BRANDY), WHO HAS BEEN IDENTIFIED AS THE PROPRIETOR OF AN ESTABLISHMENT CALLED THE "DOG AND PONY," AN INN AND ALEHOUSE WELL

KNOWN IN PHILADELPHIA IN 1787. I PREDICT THAT SCHOLARS SOON WILL REFER TO THIS DIARY AS "THE BLOODSHOT CHRONICLES." IT SEEMS THAT THE CONVENTION DELEGATES FREQUENTLY REPAIRED TO THE "DOG AND PONY" TO QUENCH THE TREMENDOUS THIRST ENGENDERED BY THEIR DIFFICULT LABORS DURING THAT LONG, HOT SUMMER. THE ESTABLISHMENT WAS CONVENIENTLY LOCATED ACROSS THE STREET FROM THE STATE HOUSE, THE BUILDING NOW KNOWN AS INDEPENDENCE HALL, WHERE THE CONSTITUTION WAS FORGED.

ALTHOUGH THE CONVENTION WAS IN SESSION FROM MAY 25 TO SEPTEMBER 17, 1787, THE CHRONICLES SEEM TO FOCUS ON THE AUGUST-SEPTEMBER PERIOD -- THE TIME WHEN THE PATENT CLAUSE WAS UNDER ACTIVE CONSIDERATION. ACCORDING TO THE CHRONICLES, THE CLAUSE WAS DISCUSSED EXTENSIVELY BY THE DELEGATES DURING THEIR SOJOURNS AT THE "DOG AND PONY." THE DIARY SURPRISINGLY REVEALS THAT THE DELEGATES FREQUENTLY WERE JOINED IN THEIR DISCUSSIONS THERE BY A SHADOWY FIGURE NAMED EBENEZER TRAMONTINE. INNKEEPER BLOODSHOT

DESCRIBES THIS INTERLOPER AND HIS ACTIVITIES AS FOLLOWS:

"EBENEZER IS SHORT OF STATURE, WIDE OF GIRTH, FLAT OF FOOT AND LONG OF WIND, WITH A HIGH FOREHEAD AND BULGING EYES. HE IS A NEW YORKER WHO GIVES HIS OCCUPATION AS LAWYER, AUTHOR, INVENTOR AND USED CARRIAGE SALESMAN. THE DELEGATES SAY THAT HE AWAITS THEM EACH DAY IN THE LOBBY OF THE STATE HOUSE, WHERE HE ACCOSTS THEM DURING EVERY RECESS IN THE CONVENTION, URGING THEM TO ADOPT THE PATENT CLAUSE. HE THEREFORE IS CALLED THE LOBBYMAN. HE SPENDS LAVISHLY FOR FOOD AND DRINK FOR THE DELEGATES HERE AT THE INN. RUMOR HAS IT THAT HE IS THE REPRESENTATIVE OF A SECRET NEW YORK ASSOCIATION KNOWN BY THE INITIALS NYPTCL, WHOSE MEMBERS STAND TO REAP HUGE PROFITS IF THE NEW CONSTITUTION INCLUDES THE PROVISION HE SEEKS."

WHO, THEN, WAS THIS EBENEZER TRAMONTINE, WHOSE HERCULEAN EFFORTS LED TO THE ADOPTION OF THE CONSTITUTIONAL PROVISION PROTECTING AUTHORS AND INVENTORS? THE ANSWER TO THIS QUESTION

CAN BE GLEANED IN BITS AND PIECES FROM THE CONVERSATIONS OF THE CONVENTION DELEGATES REPORTED IN THE BLOODSHOT CHRONICLES. IT WAS SAID THAT EBENEZER FOUGHT BRAVELY IN THE REVOLUTION -- THE AMERICAN, NOT THE SEXUAL -- HE WOULD HAVE BEEN DEFENSELESS IN THE LATTER. KING GEORGE OFTEN REFERRED TO HIM AS A "ROYAL PAIN." ACTUALLY, A BRITISH WOMAN SAVED HIS LIFE DURING THE REVOLUTIONARY WAR. SHE HID HIM IN HER ATTIC IN NEW JERSEY. IT SEEMS TO HAVE BEEN A WELL-KNOWN FACT THAT EBENEZER LOVED THE SAME WOMAN FOR THIRTY YEARS. LUCKILY, HIS WIFE NEVER FOUND OUT. ON ONE OCCASION, HE WAS HEARD TO TELL HIS WIFE THAT HE WOULD SOON GO TO THE WEST INDIES, WHERE THEY PAID A MAN FIVE POUNDS PER NIGHT FOR HIS SERVICES. HIS WIFE REPLIED THAT SHE WOULD FOLLOW HIM TO THE WEST INDIES, JUST TO SEE HOW HE WOULD LIVE ON TEN POUNDS A MONTH. EBENEZER WAS REPUTED TO HAVE BURIED THREE WIVES, TWO OF WHOM WERE DEAD.

ACCORDING TO THE GOSSIP AT THE "DOG AND PONY," THIS LOBBYMAN SPENT MOST OF HIS MONEY ON GAMBLING, DRINK AND WOMEN -- THE REST HE SPENT FOOLISHLY. THERE WERE LIMITS TO HIS GENEROSITY, HOWEVER. HE WAS ACCOSTED ON THE STREETS OF PHILADELPHIA BY A BEGGAR WHO SAID: I HAVEN'T TASTED FOOD IN A WEEK." "DON'T WORRY," ANSWERED EBENEZER, "IT STILL TASTES THE SAME." WHEN IT CAME TO IMBIBING STRONG SPIRITS, HE WAS WITHOUT EQUAL. IF THERE WAS A NIP IN THE AIR, HE WOULD DRINK IT. WHEN THE INNKEEPER ONCE ASKED HIM IF HE WANTED WATER WITH HIS BRANDY, HE SHOUTED: "I'M THIRSTY, YOU DOLT, NOT DIRTY!" ON ONE OCCASION, HIS BREATH CAUSED A FLOCK OF GEESE FLYING SOUTH TO LOSE THEIR WAY. HE SAID THAT HE DRANK TO STEADY HIS NERVES, AND HE OFTEN GOT SO STEADY HE COULDN'T MOVE. HIS ADVICE TO HIS YOUNG ASSOCIATES WAS: "ALWAYS CARRY A BOTTLE OF SPIRITS IN CASE OF SNAKE BITE. ALSO, ALWAYS CARRY A SMALL SNAKE." ALTHOUGH HE LIVED TO THE AGE OF EIGHTY, HE NEVER USED GLASSES -- HE ALWAYS DRANK RIGHT OUT OF THE BOTTLE.

THE ACCOMPLISHMENTS OF EBENEZER TRAMONTINE AS A LAWYER IN THE COLONY, LATER THE STATE, OF NEW YORK WERE AWESOME INDEED. ACCORDING TO THE CHRONICLES, HIS BRILLIANCE AS AN ATTORNEY WAS SO GREAT THAT HE COULD EXAMINE ANY CONTRACT AND TELL AT ONCE WHETHER IT WAS ORAL OR WRITTEN. HE DEFENDED MANY MURDER CASES, AND MOST RESULTED IN A SUSPENDED SENTENCE -- HANGING. HE SAID THAT HE BELIEVED IN CAPITAL PUNISHMENT, IF IT WASN'T TOO SEVERE. DURING THE PERIOD HE MAINTAINED LAW OFFICES IN NEW YORK CITY, HE HAD A FIRE IN HIS LIBRARY. BOTH BOOKS BURNED -- INCLUDING THE ONE HE HADN'T FINISHED COLORING. HE APPEARED IN MANY ACCIDENT CASES AS COUNSEL FOR THE PLAINTIFF. IN ONE OF THESE CASES A CLIENT CAME TO HIM AND SAID: "I HAVE FALLEN OFF A LOADING PLATFORM NEAR THE WHARF AND SINCE THAT TIME HAVE BEEN UNABLE TO HAVE MARITAL RELATIONS MORE THAN FIVE TIMES A WEEK." EBENEZER RESPONDED: "TELL ME, WHERE IS THAT LOADING PLATFORM? I'D LIKE TO FALL OFF IT MYSELF."

ACCORDING TO THE TALK AT THE "DOG AND PONY," EBENEZER ONCE OFFERED HIS SERVICES TO A NEIGHBOR CHARGED WITH STEALING A HORSE. THE NEIGHBOR REFUSED THE OFFER, SAYING: "GOD IS MY LAWYER." EBENEZER ADVISED: "I STILL THINK YOU SHOULD HAVE SOMEONE LOCALLY." WHEN HE TRIED TO PREVAIL ON A JUSTICE OF THE PEACE TO MARRY A YOUNG COUPLE LATE ON A FRIDAY AFTERNOON, THE JUDGE TOLD THEM TO COME BACK ON MONDAY. EBENEZER SAID: "COULD YOU SAY A FEW WORDS TO TIDE THEM OVER THE WEEKEND?" A JUDGE READ THE CHARGES AGAINST ONE OF EBENEZER'S CLIENTS -- ROBBERY, BURGLARY, RAPE, MURDER AND ARSON -- AND SAID: "COUNSELLOR, WHAT DO YOU HAVE TO SAY ON BEHALF OF THIS DEFENDANT?" "NONE OF US IS PERFECT, YOUR HONOR," WAS THE REPLY. WHEN A SEVENTY-FIVE YEAR OLD CLIENT SAID THAT HE COULD NOT SURVIVE THE TWENTY-YEAR SENTENCE IMPOSED UPON HIM, EBENEZER ADVISED: "DO AS MUCH AS YOU CAN." A JUDGE ABOUT TO PASS SENTENCE ON ONE OF HIS CLIENTS ASKED THE CLIENT: "HAVE YOU ANYTHING TO OFFER THE COURT BEFORE I

SENTENCE YOU?" "No," WAS THE ANSWER, "MY LAWYER TOOK MY LAST CENT." HIS COLLEAGUES AT THE BAR SAID THAT EBENEZER WAS TRULY A LEGEND IN HIS OWN MIND. THEY ALSO SAID THAT HE WAS A SELF-MADE MAN WHO NEVER FINISHED THE JOB.

SO MUCH FOR THE CHARACTER AND PREVIOUS ACCOMPLISHMENTS OF THIS IMPORTANT BUT HERETOFORE UNKNOWN FIGURE IN AMERICAN HISTORY. THE LAST AVAILABLE INFORMATION RELATING TO HIS WORK AT THE CONSTITUTIONAL CONVENTION IS FOUND IN THE FINAL ENTRY, DATED SEPTEMBER 17, 1787, OF THE BLOODSHOT CHRONICLES. I NOW READ THAT ENTRY TO YOU IN ITS ENTIRETY:

"THE DELEGATIONS OF THE SEVERAL STATES THIS DAY VOTED APPROVAL OF A PROPOSED CONSTITUTION. THE DOCUMENT WAS SIGNED BY THIRTY-NINE OF THE FORTY-TWO DELEGATES PRESENT AND THEREAFTER WAS FORMALLY TRANSMITTED FOR RATIFICATION. THE CONVENTION ADJOURNED SINE DIE AT 4:00 P.M. AND A MAJORITY OF THE DELEGATES CAME DIRECTLY FROM THE STATE HOUSE TO THE "DOG AND PONY," WHERE A

GREAT CELEBRATION SOON WAS UNDERWAY. DURING THE COURSE OF THE EVENING, MANY GALLONS OF RUM AND BRANDY AND MANY TANKARDS OF ALE WERE CONSUMED BY THE GENTLEMEN OF THE CONVENTION.

"THERE WAS OVERHEARD AT THE FESTIVITIES A CONVERSATION BETWEEN DR. BENJAMIN FRANKLIN, WHO WAS THEN EIGHTY-ONE YEARS OF AGE AND THE OLDEST DELEGATE, AND MR. JONATHAN DAYTON OF NEW JERSEY, WHO WAS THE YOUNGEST DELEGATE AT TWENTY-SIX. DR. FRANKLIN SAID: 'AT MY AGE MY BACK GOES OUT MORE OFTEN THAN I DO. HOWEVER, THERE IS NOTHING I COULD DO AT EIGHTEEN THAT I CAN'T DO NOW -- WHICH SHOWS YOU HOW PATHETIC I WAS AT EIGHTEEN. THE YEARS HAVE BEEN KIND TO ME, BUT THE MONTHS IN BETWEEN HAVE KNOCKED ME TO PIECES.' MR. DAYTON SAID: 'I HAVE SPENT MUCH OF MY TIME HERE IN PHILADELPHIA IN THE COMPANY OF A CERTAIN YOUNG LADY. WHEN I KISSED HER, SHE SAID IT WAS AGAINST THE ORDERS OF A PHYSICIAN. I ASKED IF SHE WERE ILL, AND SHE REPLIED THAT SHE WAS NOT BUT THAT HER HUSBAND IS A PHYSICIAN. I ASKED TO SEE THE INSIDE OF HER

HOUSE, SO SHE DREW ME A SKETCH. SHE SAID THAT HER HUSBAND HAD TAKEN UP THE CALLING OF POLITICIAN, BUT THAT SHE HERSELF WAS IN AN INNOCENT CONDITION. I ASKED HOW HER INNOCENCE WAS RELATED TO HER HUSBAND'S OCCUPATION AS A POLITICIAN. SHE REPLIED THAT IT WAS HER HUSBAND'S HABIT TO COME HOME LATE AT NIGHT, SIT UPON HER BED AND TELL HER HOW GOOD IT'S GOING TO BE.'

"THERE WERE MANY OTHER RIBALD CONVERSATIONS DURING THE COURSE OF THE EVENING, BUT AT THE STROKE OF MIDNIGHT, A HUSH FELL OVER THOSE ASSEMBLED AT THE INN. IT WAS THEN THAT EBENEZER TRAMONTINE STAGGERED TO HIS FEET, MOUNTED A TABLE AND BEGAN TO SPEAK. HE CONGRATULATED THE DELEGATES FOR THEIR WISDOM AND FORESIGHT IN FORMULATING THE NEW CONSTITUTION, AND HE SPOKE OF THE FUTURE OF THE NATION, SAYING THAT IT WOULD ONE DAY SPAN THE CONTINENT FROM OCEAN TO OCEAN. HE SAID THAT THE UNITED STATES OF AMERICA WOULD COME TO BE THE FIRST COUNTRY ON EARTH, NOT BECAUSE OF THE WEALTH THAT IT WOULD ACQUIRE, BUT BECAUSE OF THE FREEDOMS

AND OPPORTUNITIES IT WOULD PROVIDE FOR ITS CITIZENS. HE SAID THAT THOSE CITIZENS WOULD COME FROM ALL THE COUNTRIES OF THE WORLD, AND THAT THEY AND THEIR DESCENDANTS AND A CONTINUING FLOW OF NEWCOMERS WOULD PROVIDE DIVERSITY AND STRENGTH IN THIS GREAT EXPERIMENT THE DELEGATES HAD UNDERTAKEN. HE SAID THAT A GREAT CAPITAL FOR THE NATION WOULD BE BUILT ON THE SWAMPLAND SOUTH OF PHILADELPHIA AND THAT IT WOULD BE NAMED FOR GENERAL WASHINGTON. HE PREDICTED THAT MANY LOBBYMEN, AND EVEN LOBBYWOMEN, WOULD RESIDE IN THAT CITY.

"COMMENDING THE DELEGATES FOR PROVIDING CONSTITUTIONAL PROTECTIONS FOR AUTHORS AND INVENTORS, HE ANNOUNCED THAT A WHOLE NEW CLASS OF LAWYERS, A VERITABLE ARMY OF THEM, WOULD COME INTO BEING TO ASSIST IN THE ENFORCEMENT OF THESE PROTECTIONS. HE SAID THAT A DESCENDANT OF HIS WOULD PRESIDE OVER A SOCIETY OF THESE LAWYERS AND WOULD BECOME INVOLVED IN LITIGATION OVER A CONTRAPTION THAT COULD REPRODUCE A MAN'S IMAGE IN SECONDS. HE

FORESAW HUNDREDS OF FEDERAL JUDGES, SOME OF WHOM WOULD EVEN UNDERSTAND THE SUBJECT, HEARING CASES PRESENTED BY THESE SPECIALIZED LAWYERS. HE PREDICTED THAT A SPECIAL FEDERAL APPEALS COURT WOULD BE ESTABLISHED TO HEAR APPEALS IN PATENT CASES.

"HE THEN SPOKE OF MANY STRANGE THINGS HE SAID WOULD COME TO PASS ON ACCOUNT OF THE DELEGATES' RESOLVE TO PROMOTE THE PROGRESS OF SCIENCE AND THE USEFUL ARTS: HORSELESS CARRIAGES; FLYING MACHINES; SOUND RECORDINGS; UNDERWATER VESSELS; BOXED IMAGES; AND TALKING WIRES. HE ALSO SPOKE OF OTHER WONDROUS THINGS TO COME: BEER CANS; UNDERARM DEODORANT; FRISBEES; AND DISPOSABLE DIAPERS. HE PREDICTED THAT SOMEONE WOULD INVENT MOVING, TALKING PICTURES AND THAT A MAN, WHOSE BUSINESS IT WAS TO APPEAR IN THESE PICTURES, WOULD HOLD THE OFFICE OF PRESIDENT OF THE UNITED STATES.

"UPON HEARING THE LAST STATEMENT, THOSE ASSEMBLED FELL INTO UPROARIOUS LAUGHTER, WHICH DROWNED OUT ANY FURTHER REMARKS OF THE

SPEAKER. SOME OF THE GENTLEMEN PRESENT SAID EBENEZER WAS DRUNK;
OTHERS SAID HE WAS CRAZY. AND THERE WERE A FEW -- JUST A FEW --
WHO SAID HE HAD THE PROPHET'S GIFT TO FORETELL THE FUTURE."

THANK YOU.