

11-13-1986

## **Memo: Special Projects Subcommittee**

Second Circuit Steering Committee on the Bicentennial of the U.S. Constitution

RECEIVED

NOV 18 1986

ROGER J. MINER  
U.S. CIRCUIT JUDGE  
ALBANY, NEW YORK

TO: LWP  
cc: RJM  
Re: Special Projects Subcommittee

MEMORANDUM OF JLO

I certainly heartily endorse all five of the special projects approved by RJM's subcommittee. I would like to have for my records, however, copies of his attachments.

Many thanks.

J.L.O.

November 13, 1986

RECEIVED

November 14, 1986

NOV 18 1986

ROGER J. MINER  
U.S. CIRCUIT JUDGE  
ALBANY, NEW YORK

TO: J. Miner, Co-Chair, Subcommittee on Special Projects  
J. Haight, Co-Chair, Subcommittee on Special Projects

FROM: J. Pierce, Chair, Steering/Coordinating Subcommittee

Spec. Proj. #1: Abigail Adams

The Steering/Coordinating Subcommittee recommends approval. Forwarded to Judge Oakes for review and action.

LWP  
11/13/86

Apropos this project the Steering/Coordinating Subcommittee recommends that you consider whether you ought not increase the ticket price from \$35 to \$50; charge everyone the same price, with no special rates for anyone; and anticipate a sellout.

The Steering/Coordinating Subcommittee requests that it be kept apprised of developments.

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Spec. Proj. #2: Commemorative Plaque

The Steering/Coordinating Subcommittee recommends approval. Forwarded to Judge Oakes for review and action.

LWP

11/13/86

The Steering/Coordinating Subcommittee recommends that you consider whether the plaque might cost closer to \$2,000-3,000; whether Morgan Bank might be asked by a non-judicial member to fund the project; and whether Morgan Bank might wish to make a sizeable contribution toward the work of the Second Circuit Bicentennial Committee. Discussions with J. Oakes, J. Meskill, B. Fiske, etc. may be in order.

The Steering/Coordinating Subcommittee requests that it be kept apprised of developments.

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Spec. Proj. # 3: Colonial Music Concerts

The Steering/Coordinating Subcommittee recommends approval. Forwarded to Judge Oakes for review and action.

LWP  
11/13/86

The Steering/Coordinating Subcommittee suggests that your cost estimate may be much too low and wishes to alert you to likely poor acoustical conditions in the Foley Square courthouse lobby.

Also, Phylis S. Bamberger informed us that the Smithsonian has recordings and instruments relating to music of the colonial era--see attachment for further information. Further, music schools may very well be interested in participating.

Attached is a colonial era ballad--compliments of John Gordan, III. He identifies the composer as Francis Hopkinson, the first federal district judge appointed in Pennsylvania.

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...pro-  
 port numerous tunes for dancing, among  
 and much admired" *Voice Quadrille*. Be-  
 tures with the classic *Pantalon* and *L'Élé*,  
 e dancers and the listener in the third fig-  
 s—originally members of his band who  
 e they sang. Dancers evidently joined the  
 he singing after the quadrille became better  
 in the third figure are "If you consent to  
 nd in hand we join in glee." In the fourth  
 lark! Hear the merry trumpet sound" an-  
 as undoubtedly played by Johnson on his  
 get. For the Finale, bells and a laughing  
 "If you will dance, we will sing, / And the  
 ag, / Ha, ha, ha . . ." The anonymous ar-  
 gere retains the sometimes unconventional  
 ons found in Johnson's sheet-music ver-  
 h new ones that reflect the provincial New  
 ck of sophistication. Johnson's stature as a  
 t be judged solely on this arrangement, for  
 delphia, New York, Boston, and Saratoga  
 mentator to remark in the *Detroit Free Press*  
 , "it may be said of him without fear of con-  
 composer or a musician, he stands without

untry dance in which men and women  
 ing each other, was danced only occasion-  
 allrooms of the late 1840s and 1850s. But the  
 ways" dance, where everybody danced  
 , was still strong in rural areas and at pri-  
 me of the most popular reels was *Money*  
 sed about 1775 by Daniel Dow as *Sir Ar-*  
*nemusk's Reel*. Found in private libraries  
 ad a copy) and in instrumental and dance  
 e 19th century, the tune was usually played  
 Most often, the fiddler would not only play  
 uctions to the dancers. It is heard here in an  
 at for violin, clarinet, cornet, and bass.

*Ball-Room Hand Book*, Elias Howe wrote that  
 dance in 2/4 time, was very much in vogue  
 le or concludes the first part of a public ball.  
 g nature." When avid ballroom dancers of  
 ight-bar introduction to the *Schomberg Galop*,  
 od like thoroughbreds at the starting gate.  
 the galop, they would move in sliding steps  
 ppeting with surrounding couples in speed  
 musical momentum increased (especially  
 he eight-bar passage of ascending and des-  
 cending), the couples would sprint during the  
 rush toward the chairs along the wall, pant-  
 and pleasure. Exhausted but exhilarated,  
 take their leave to the familiar strains of  
*et Home*. In the 1853 version by Allen Dod-  
 and lower brasses are given descending scale  
 to the poignancy of the melody. Dodworth,  
 sience at dances, knew how to program the  
 the crowd with a chordal four-bar passage  
 then send them home *fortissimo* with a rous-

CYNTHIA ADAMS HOOVER

...a favorite of both players and audi-  
 used most frequently on this recording is fitted with cylindrical Stölzel valves

- 1 Flute, 8 keys, rosewood, by Charvrier Peloubet, New York, 1850 (Smithsonian Catalogue No. 66.199)
- 2 Clarinet in C, 13 keys, boxwood, by Marting, French or U.S. manufacture, ca. 1860 (No. 378,924)
- 3 Clarinet in B $\flat$ , 8 keys, boxwood, by Klemm, Philadelphia, English or U.S. manufacture, ca. 1840-50 (Collection of Robert Sheldon)
- 4 Clarinet in A, 11 keys, boxwood, unmarked, possibly U.S. manufacture, mid-19th century (Collection of Robert Sheldon)
- 5 Keyed Bugle in E $\flat$ , copper with 9 brass keys, by Henry Sibley, Boston, ca. 1840-50 (No. 237,755)
- 6 Keyed Bugle in C, crooked in B $\flat$ , copper with 11 brass keys, Anon. New England maker (nameplate missing), possibly Graves, New Hampshire, ca. 1840-50 (No. 363,499)
- 7 Alto Ophicleide in E $\flat$ , 9 keys, brass, by Klapmann Frères, Paris, mid-19th century (No. 205,858)
- 8 Bass Ophicleide in B $\flat$ , 9 keys, brass, unmarked, French manufacture, mid-19th century (No. 292,226)
- 9 Bass Ophicleide in B $\flat$ , 10 keys, brass, unmarked, French manufacture, mid-19th century (Collection of Robert Eliason)
- 10 Horn, orchestral, crooked in E $\flat$ , unmarked, ca. 1800 (No. 65,600)
- 11 Horn, orchestral, crooked in E $\flat$ , by M. A. Raoux, Paris, ca. 1840 (No. 74.5). Also used with a detachable 2-valve section made for it at a later date.
- 12 Trumpet, 2-valved, with Stölzel pistons, crooked in E $\flat$ , unmarked, probably English manufacture, ca. 1830-40 (No. 54,255)
- 13 Cornet, with three Stölzel pistons, unmarked, French manufacture, ca. 1845-50 (No. 65,160)
- 14 Cornet in B $\flat$ , nickel silver, string rotary valves, by D. C. Hall, Boston, early 1860s (Collection of Robert Sheldon)
- 15 Tenor Trombone in B $\flat$ , by J. Howard Foote, New York, ca. 1880 (No. 55,603)
- 16 Bass Trombone in F, by Graves and Co., Winchester, New Hampshire, ca. 1845-50 (Collection of the Henry Ford Museum)
- 17 Soprano Saxhorn in E $\flat$ , nickel silver, string rotary valves, by E. G. Wright, Boston, ca. 1860 (No. 71.13)
- 18 Soprano Saxhorn in E $\flat$ , brass with nickel plate, string rotary valves, by Isaac Fiske, Worcester, Massachusetts, ca. 1870 (No. 66,459)
- 19 Alto Saxhorn in E $\flat$ , nickel silver, string rotary valves, by John Stratton, New York, ca. 1870 (Collection of Robert Sheldon)
- 20 Alto Saxhorn in E $\flat$ , nickel silver, string rotary valves, Boston Musical Instrument Manufactory, ca. 1870-80 (Collection of Robert Sheldon)
- 21 Tenor Saxhorn in B $\flat$ , copper with three twin pistons (for the left hand) marked "Allen & Co. Norwich, Ct." 1846-49 (Collection of the Henry Ford Museum)
- 22 Tenor Saxhorn in B $\flat$ , brass, string rotary valves, by J. Howard Foote, New York, ca. 1880 (No. 55,599)
- 23 Baritone Saxhorn in B $\flat$ , brass, string rotary valves, by J. Howard Foote, New York, ca. 1880 (No. 55,600)
- 24 Contrabass Saxhorn (Tuba) in E $\flat$ , brass, string rotary valves, by J. Howard Foote, New York, ca. 1880 (No. 55,601)
- 25 Square piano, by Jonas Chickering, Boston, 1850 (No. 70.19)
- 26 Violin, by Nicolo Gagliano, Naples, 1730 (No. 73.42)
- 27 Violin, by Joseph Gagliano, Naples, 1781 (Rebecca Jenkins)
- 28 Cello, by Enrico Rocca, Italy, 1898 (Elizabeth Tuma)
- 29 Orchestra bells, by J. C. Deagan & Co., Chicago, early 20th century (No. 74.10)

The four instruments marked J. Howard Foote were made in a New York City factory (possibly John Stratton) and retain the basic style and size of similar brass instruments during the 1850s.

This recording represents a joint effort between the Division of Musical Instruments of the Smithsonian Institution and Nonesuch Records. The Division staff, which works with a collection of European and American instruments ranging from the 17th to the 20th centuries, believes strongly that musical instrument collections should be heard as well as seen. The Smithsonian Social Orchestra & Quadrille Band was organized as one expression of this concern, and made its first appearance on March 11, 1974, in a dance concert featuring the music heard in this album; its members include musicians from the National Symphony and other leading Washington ensembles. In this recording, the players are joined by the Camerata Chorus of Washington, a non-profit professional chamber chorus which has performed under the direction of Joan Reinthaler in the Washington-Baltimore area since 1963.

James Weaver is Concert Director in the Division of Musical Instruments, where he has also led other Smithsonian ensembles specializing in 18th-century instruments and repertoire. Mr. Weaver, a graduate of the University of Illinois and a former student of Gustav Leonhardt, is active as harpsichordist, organist, teacher, and lecturer. In establishing and directing the Smithsonian Social Orchestra & Quadrille Band, Mr. Weaver has worked closely with Robert Sheldon, Museum Specialist in Wind Instruments. A graduate of the Eastman School of Music and a former member of the Eastman Wind Ensemble and the Rochester Philharmonic, Mr. Sheldon has been on the staff of the Division of Musical Instruments since 1965. In addition to Messrs. Weaver and Sheldon, members of the Division's staff who lent their special efforts to this recording are Cynthia Adams Hoover, Curator, and Scott Odell, Chief of Conservation.

The Division of Musical Instruments and Nonesuch Records wish to thank the Music Division, Library of Congress, for the use of the Coolidge Auditorium for this recording, and Jon Newsom, Chief, Reference Section, Music Division, for his generous assistance.

...ing condition by Robert Sheldon.

Grateful thanks also to the Henry Ford Museum and its Curator of Musical Instruments, Robert Eliason, for the loan of two instruments, and to Arthur LaBrew for information about Francis Johnson and A. J. R. Conner.

SOURCES Side One, Band 1 Side Two, Bands 3-11: Allen Dodworth, *Dodworth's Brass Band School*, New York, 1853. Side One, Band 2, Side Two, Bands 2, 8a, B, A. Rurditt, *The Germania*, Boston, 1855. Side One, Bands 3, 4, 7: J. Schatzman, *Peters' Sax-Horn Journal*, Cincinnati, 1859. Side One, Band 5: A. J. R. Conner, *Five Step Waltz*, Boston, 1858. Side One, Band 6, Side Two, Band 10: G. W. E. Friedrich, arr., *Orchestral Journal*, New York, 1856. Side One, Bands 8, 11 (instrumental arrangement): [Anon.] *The New England Musician*, Lowell, 1848. Side One, Band 9, Side Two, Band 6: G. W. E. Friedrich, arr., *Trios For Social Amusement*, New York, 1857. Side One, Band 10, Side Two, Band 8b: Elias Howe, Jr., compiler, *First Part of the Musician's Companion*, Boston, 1844. Side One, Band 11 (vocal arrangement): Francis Johnson, *Johnson's Celebrated and much admired Voice Quadrilles*, Philadelphia, 1840. Side Two, Bands 1, 7: [Simon Knaebel, arr.] *Keith's Collection of Instrumental Music*, Boston, 1844. Side Two, Band 4: Stephen C. Foster, *The Social Orchestra For Flute or Violin*, New York, 1854. Side Two, Band 5: E. K. Eaton, *Twelve Pieces of Harmony for Military Brass Bands*, New York, 1846. Side Two, Band 9: [Anon.] *La Cachucha*, Boston, 1840.

recorded September & November 1974, Coolidge Auditorium, Library of Congress, Washington, D.C.

engineering & musical supervision/Marc J. Aubort, Joanna Nickrenz (Elite Recordings, Inc.)

mastering/Robert C. Ludwig (Sterling Sound, Inc.)

a Dolby-system recording

front-cover illustration: lithograph by Benjamin W. Thayer, from the sheet-music *Violet Quadrilles* by Zaleucus (publ. Henry Prentiss, Boston, ca. 1845)

production supervisor/Teresa Sterne design & art direction/Paula Bisacca

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How far were the voters affected by the torrent of propaganda? This is difficult to assess. In places like New Hampshire and Massachusetts where delegates came instructed, it may be assumed that the impact was considerable. Obviously, writers believed that they were reaching people, for it is striking how in a place like New York the flow of essays very nearly dried up after the elections there were over. That the delegates to the several state conventions were in countless instances the beneficiaries of what had been laid before them by the press has already been noticed. And it may be remarked that no matter how whimsical were the grounds parroted by delegates from their reading, these were always propounded as the firm conclusions of reason. This, too, reflected the nature of the propaganda. For it was characteristic of the Age of Enlightenment that propagandists optimistically, in such numbers, made appeal to the reason of their readers. For political purposes, of course, the appeals to prejudice may be cynically viewed as no less an appeal to reason—but a reason somewhat askew. Attempts to stir the imagination of readers took the form of conjuring dreams of better times, or, on the other hand, of playing upon fear which is a notable stimulant of antic ideas. Some of these gambits, as we have seen, were fanciful to the point of being bizarre, and they were countered by ribaldries and grotesqueries on a premise resembling the homeopathic *similia similibus curantur*.

There was, however, one flight of fancy, Francis Hopkinson's *New Roof*, which was at once an appeal to reason and to the mother wit of any man who had ever wielded hammer or saw.<sup>132</sup> Hopkinson set out the merits of the Constitution in a parable about the old house that needed a new roof. He relates how James, the architect, surveyed the old place and set about making plans for a new roof because the old one was too bad to repair. A fractious old woman, who lived in the house and whose apartment was to be made smaller, angrily made trouble. With humor and dexterity, the objections of the antifederalists are set out in builder's terms—in particular, the fuss over lack of a bill

<sup>132</sup> The "New Roof" was first printed in the *Pennsylvania Packet*, Dec. 29, 1787. Other Philadelphia papers copied it almost at once, and the antifederalist papers soon attacked Hopkinson violently. The text reprinted in McMaster and Stone, *Pennsylvania*, 510-16, accords with that in the *Packet*. James, the architect in the allegory, is, of course, Wilson; Margery is George Bryan; the William, Jack and Robert whom she enlists are, respectively, Findley, Smilie and Whitehill, who carried the bur-

den for the antifederalists at the Pennsylvania Convention (*infra*, p. 327). The lunatic whose ranting ends the piece has been identified as James Workman, a tutor at the university who, as *Philadelphensis*, had been grinding out extravagances against the Constitution.

The "New Roof" was the origin of the ornament used by journals, the structure supported by columns inscribed with the names of states which had already ratified.

### VII: *The Framers as Propagandists*

of scantlings. It is testimony to the enchantment evoked by this amusing story that within a few weeks the idea was versified by Hopkinson into "The Raising: A new song for federal mechanics":<sup>183</sup>

Come muster my lads, your mechanical tools  
Your saws and your axes, your hammers & rules,  
Bring your mallets and planes, your level and line  
And plenty of pins of American pine;  
For our roof we will raise, and our song still shall be—  
Our government firm, and our citizens free.

The ballad continues with the details of a raising, and then, in the fifth verse, judges are celebrated in song for probably the first time in American history:

Our *King Posts* are judges—how upright they stand,  
Supporting the *Braces*, the Laws of the Land—  
The Laws of the Land, which divide right from wrong,  
And strengthen the weak, by weak'ning the strong.  
Chorus.

<sup>183</sup> G. E. Hastings, *The Life and Works of Francis Hopkinson*, at 409, states that Hopkinson published the verse in the *American Museum* in July 1788. Actually it appeared in the *Pennsylvania Gazette*, Feb. 6, 1788. It was reprinted in the New York

*Daily Advertiser*, Feb. 11, 1788; the *Massachusetts Gazette*, Feb. 29, 1788; *Massachusetts Centinel*, Mar. 1, 1788; *Rhode Island Newport Mercury*, Mar. 3, 1788; the *Norwich Packet*, Mar. 6, 1788; the *Virginia Independent Chronicle*, Feb. 20, 1788.



Spec. Proj. #4: Panel Discussion--Federal Courts

The Steering/Coordinating Subcommittee recommends approval. Forwarded to Judge Oakes for review and action.

LWP  
11/13/86

It is unclear to the Steering/Coordinating Subcommittee whether the presentation and funding of this panel discussion have been discussed with the Chairman of the Planning and Program Committee for the Second Circuit Judicial Conference (J. Newman?). Kindly keep us apprised of developments.

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We have noted the other projects identified in your report which are under consideration--they are most interesting and we will await further word from your Subcommittee.

Please note that we need to have the name, etc. of your publicity person and we await an estimated lump sum budget request.

Thank you for your prompt and imaginative report and for using the prescribed format.

cc: Judge Oakes  
Judge Meskill  
Members, Steering/Coordinating Subcommittee  
SFlanders  
PPetruck