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Subseries: Chron File, 1989-1993

OA/ID Number: 13786
Folder ID Number: 13786-012

Folder Title:
200th Anniversary - Bill of Rights Montpelier, VA 12/16/91 [OA 8332] [2]

Stack:	Row:	Section:	Shelf:	Position:
G	26	22	1	4

12-05-91

DECEMBER 16, 1991 -- EVENT OUTLINE

(Outline to be confirmed by White House and Members of Congress)

Guests to include: Central and Eastern European Legislators
Members of Congress
Members of the Supreme Court
White House Staff
Members of the Cabinet
Virginia Statehouse
Local Orange County Officials
National Trust -- Board
Members/Friends/Supporters
Media Guests

TIME

ACTION

- 8:30 am D.C. guests board train at Union Station. Information kits and luncheon seating assignment are given to guests at the train check-in station. Guests are also given a car number for seating.
- 9:00 Train departs Union Station. Breakfast is served. Strolling storytellers discuss the day and talk about Montpelier. James MacGregor Burns available to press and others on the train to talk about the Bill of Rights.
- 11:00 Train arrives Montpelier Station. Guests are transported via mini-bus to "Exhibit Tent" on the front lawn and are served warm drinks before President arrives.
- James MacGregor Burns and appropriate bi-partisan officials discuss the Bill of Rights. Photo display of Montpelier in tent. Historical interpreter actors, Dolley Madison and James Madison are in tent to tell about the history of Montpelier and welcome guests to the estate. If appropriate, local high school bands playing outside tent.
- Guests arriving by car will be checked in via master list at the front gate and will be directed to a parking area. Guests will receive information materials at a check-in tent at the parking area. Guests will then be directed to the "Exhibit Tent" on the front lawn.
- 11:45 President George Bush arrives via helicopter to Montpelier property and is driven to the front of house. (Possibly to be accompanied by Senator Warner and Secretary Lujan.)

11:45 Guests will be in designated area on the front lawn of Montpelier for President George Bush's arrival.

11:45 President George Bush is greeted on Montpelier front porch by National Trust for Historic Preservation President Jack Walter and Trust Chairman Robert Bass.

Speaker of the House Thomas Foley, Chief Justice William Rehnquist and President George Bush appear on front stairs and on front porch for symbolic photos of the three branches of government. (Not confirmed.)

Photo opportunity continues with group on front porch joined by House Majority Leader Richard Gephardt, Senate Majority Leader George Mitchell, House Minority Leader Robert Michel, Senate Minority Leader Bob Dole, Former Chief Justice Warren Burger, Secretary of the Interior Lujan, Attorney General Terry, Governor Douglas Wilder, Senator Robb, Senator Warner. (Not confirmed.)

11:50 President George Bush, Speaker of the House Thomas Foley and Chief Justice Rehnquist enter Montpelier (others to follow to be selected) -- led by Trust President Jack Walter and Trust Chairman Robert Bass -- to attend a private reception in "duPont Dining Room" with Central and Eastern European Legislators and National Trust Board Members, Friends and Supporters. President Bush to be in "duPont Breakfast Room" so that guests can pass through doors of dining room to breakfast room for photo/handshake and then exit to go to luncheon tent.

(Reception guests -- with exception of Members of Congress, others on front porch -- will already be in the reception room. They will not be on the lawn for the arrival of the President.)

11:55 Other guests enter front hallway of house and cross entry of house to tented luncheon area behind house.

12:10 p.m. Reception breaks. (Reception guests have slowly exited as they have walked through the breakfast room for photo/handshake with President Bush.)

12:15 National Trust President Jack Walter and Trust Chairman Robert Bass welcome President George Bush and guests. Luncheon is served. Brief remarks about James Madison and the Bill of Rights by Chief Justice William Rehnquist, President Pro Tempore of the Senate Robert Byrd, Speaker of the House Thomas Foley.

400-500
for lunch

12:30 pm National Trust for Historic Preservation staff arrives at Montpelier. Staff is unloaded at "Exhibit Tent" to view exhibit and await President Bush's departure from Montpelier. Historical interpreters from the train will join Dolley and J James Madison to perform for Trust employees.

- 1:00 Historical interpreters are taken by mini-bus to the cemetery where they will perform for the public arriving for event at cemetery.
- 1:00 [Senator Warner introduces President Bush. President George Bush addresses guests with a speech in commemoration of the 200th anniversary of the Bill of Rights.
- 1:40 Closing remarks by Trust President Jack Walter and presentation of gift to President George Bush by Trust Chairman Robert Bass.
- 1:50 President George Bush, escorted by Trust President Jack Walter and Trust Chairman Robert Bass, leaves house on foot to go to "Exhibit Tent" to view photo exhibit of the evolution of James Madison's home.
- National Trust staff have left tent and are around the driveway circle to cheer for and wave at President Bush as he walks down driveway to "Exhibit Tent."
- 2:00 Non-pool press corps departs in mini-vans for cemetery event.
- 2:10 President George Bush leaves "Exhibit Tent" to go by car to James Madison's grave (on the estate property).
- 2:15 ? President George Bush arrives at cemetery and lays a wreath at James Madison's tomb. Brief public remarks at gravesite. Drum and bugle corps present. Orange County public, school children and local officials to be present.
- 2:15 Luncheon guests adjourn and leave house. Guests walk to parking lot or board buses to train station.
- 2:40 President Bush departs by car to helicopter for return to White House.
- 3:00 Train departs Montpelier Station. Refreshments (open bar and hors d'oeuvres) served on board.
- 5:00 Train arrives Union Station.

*** President Bush and White House Staff to have the second floor available -- see diagrams of house -- to them for any breaks necessary. Any time needed for these breaks can be included into the timeline.

The People's Bill of Rights

by James MacGregor Burns, University of Richmond

The framing and passage of the Bill of Rights was a supreme moral achievement. These ten amendments, finally added to the Constitution by the Virginia legislature on December 15, 1791, stand as a beacon of freedom two hundred years later -- for Americans and especially for people seeking to build freedom and democracy around the globe.

But the Bill of Rights was also a highly political act -- framed by politicians, argued over by politicians, adopted by politicians, and from start to finish demanded by the populace.

We all remember that the Framers "left out" a bill of rights from the constitution they drafted in the summer of 1787. Anti-Federalists used this omission to help rally people against the new charter. Politicians at the state ratifying conventions worked out a masterly compromise: doubtful convention delegates -- many of them from the hinterland -- would vote for the new charter if the Federalist leaders would promise to add bill of rights amendments as soon as the new government was established. These leaders honored that promise. Politicians produced the draft amendments and pushed them through Congress by two thirds votes, and then through the legislatures.

Liberty-loving Americans had feared above all that a powerful federal government might threaten their individual liberties. In the late 1790's their nightmare turned into reality. Through the Alien and Sedition Acts the Adams administration jailed persons for simply speaking against the Administration. Jefferson and Madison stopped this when they won the election of 1800. Once more it was the people -- or at least the male whites who voted -- who came to the defense of liberty.

Truly the Bill of Rights is a people's charter.

FOR
NEWSPAPER

CENTRAL AND EASTERN EUROPE:

THE MADISONIAN MOMENT

by

A. E. DICK HOWARD

The advent of constitutional democracy in Central and Eastern Europe demonstrates the power of ideas. Nearly a half-century of alien domination did not insulate Poles, Hungarians, Czechs, Slovaks, and others in the region from yearning to live in freedom and human dignity - an aspiration that knows no national boundaries.

As drafters in Central and Eastern Europe turn to the making of constitutions and bills of rights, they join in a process with an ancient ancestry. Hungary's Golden Bull of 1222, like England's Magna Carta, is an early example of a search for ways to restrain the abuses of power. Poland's great constitution of May 3, 1791, is another landmark on the road to constitutionalism.

Modern notions about constitutional government owe much to the work done by the American founders. The great experiment that produced the Constitution of the United States and the Bill of Rights generated intense interest across the Atlantic. George Mason's 1776 Declaration of Rights for Virginia influenced not only the other American states but also the French Declaration of Rights of Man and the Citizen (1789). When the Swiss, a half a century later, drafted their 1848 Constitution, they drew heavily upon the insights built by James Madison and his colleagues into the United States Constitution.

The American drafters owed a great debt, of course, to European thinkers and ideas. From the British Constitution Americans drew the concept of due process of law. John Locke's writings nurtured the idea of a constitution as a social compact. In shaping the separation of powers Americans drew upon the inspiration of Montesquieu -- the "great oracle," as Madison

called him.

As Americans celebrate the bicentennial of their Constitution and Bill of Rights, the peoples of Central and Eastern Europe are having their own Madisonian moment. Drafters in Prague, Warsaw, and other capitals debate issues of constitutional government that would be familiar to any student of American history.

The constitutional drafter must decide what principles are sufficiently fundamental to be included in a constitution. A constitution is not a code of laws, as the Philadelphia framers understood. Yet the architects of a constitution will find themselves under pressure to write a document that looks like a political party's platform.

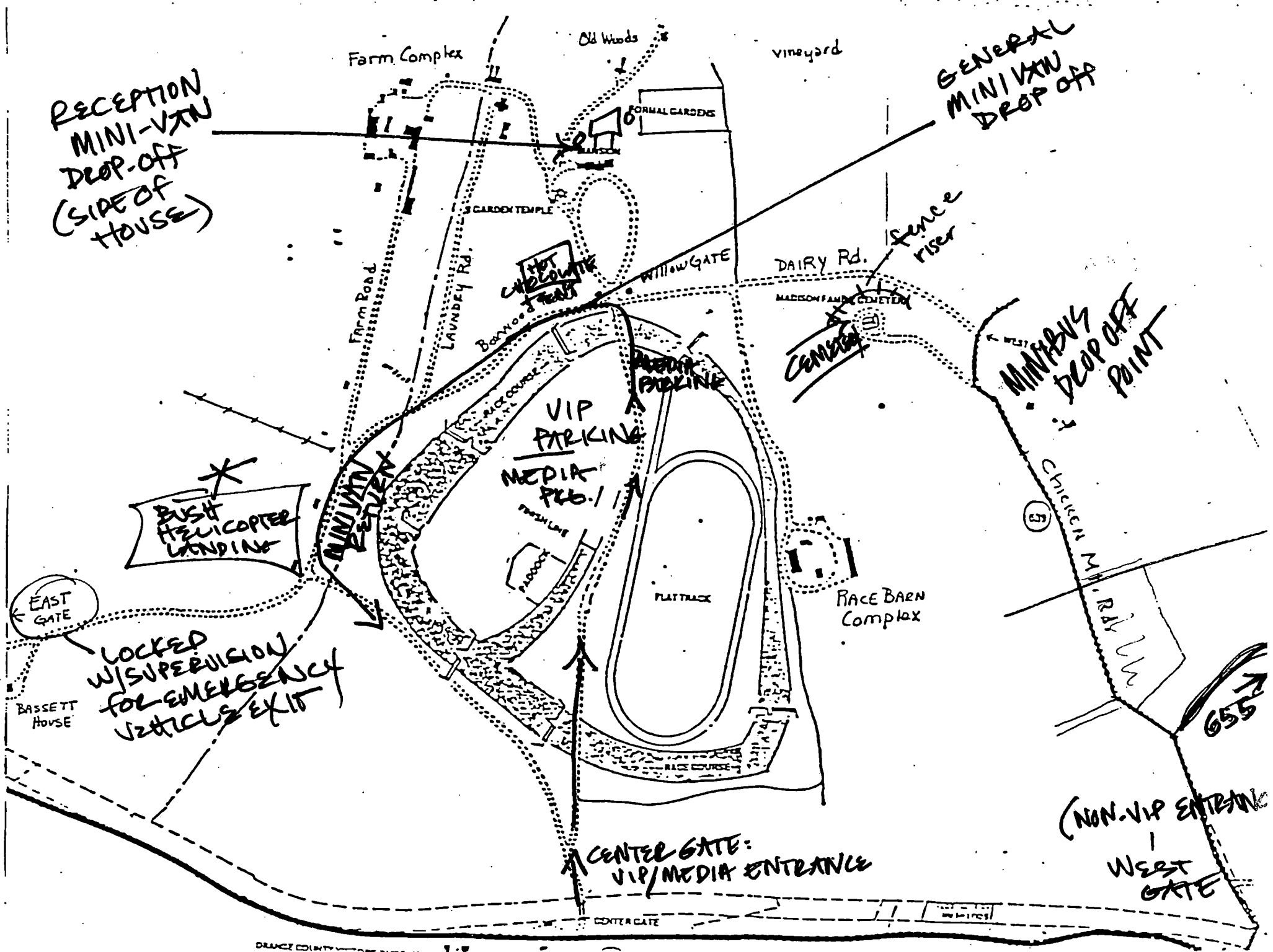
What should a constitution say about executive power? About the legislative process? What rights should be proclaimed? How is the constitution to be enforced? These are the kinds of questions which tested the skills of the framers of 1787, and they are the questions which surface two hundred years later.

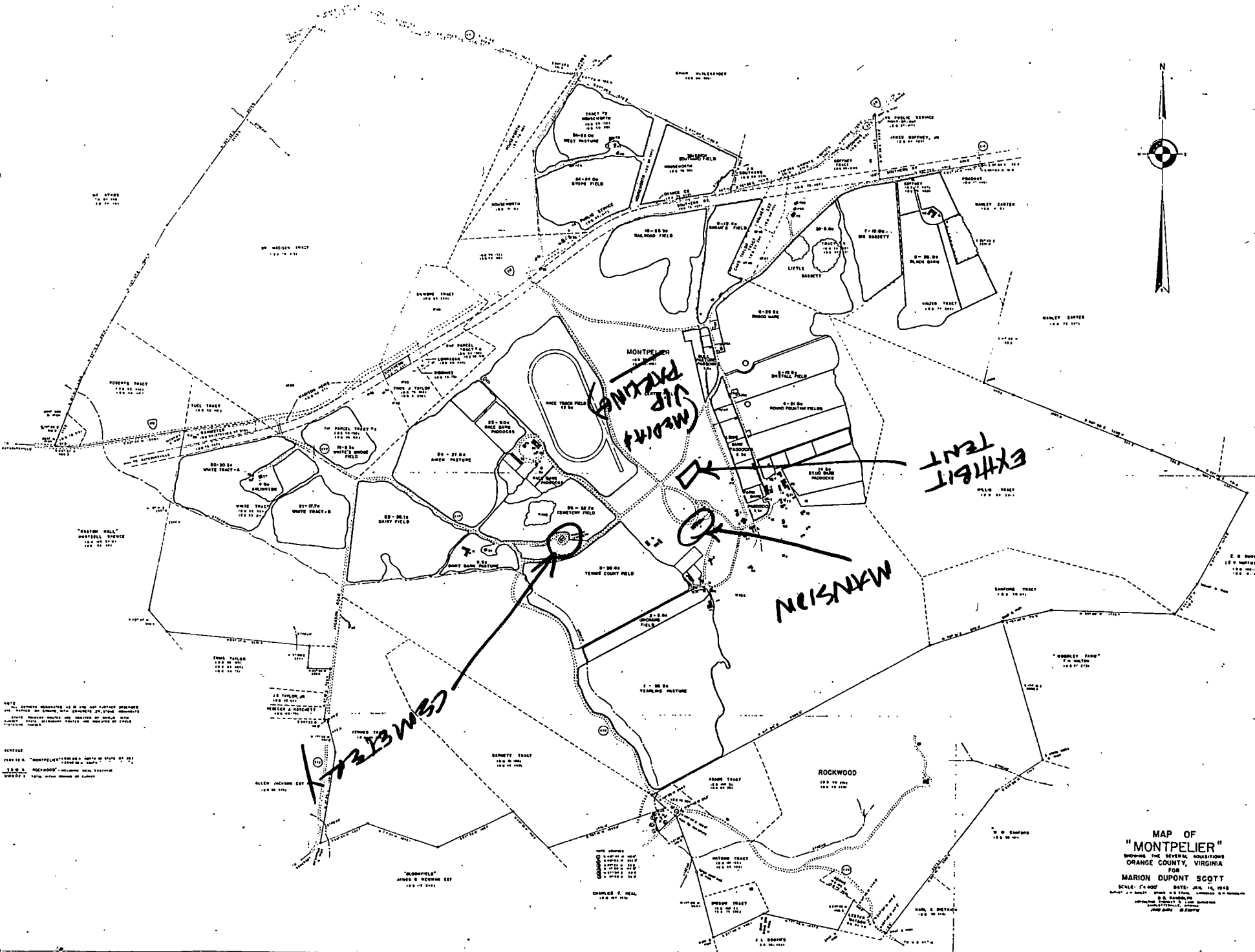
Constitutional democracy requires, however, more than a good constitution. Making reality of consent of the governed requires a multi-party system and fair and free elections. The open society depends upon robust debate and a free press. The army, the police, and other organs and officials of government must accept restraints that respect human dignity and individual freedom.

Ultimately, the success of constitutionalism in Central and Eastern Europe turns -- as it does in the United States -- on a mature civic spirit. Leaders with the moral authority of a Václav Havel or an Arpad Goncz can play their part. But the vitality of constitutional government rests, above all, on how well the people themselves understand its premises and challenges.

A nation neglects civil education at its peril. "What spectacle," asked Madison, "can be more edifying, or more seasonable, than that of Liberty and Learning, each leaning on the other for their mutual and surest support?" As the nations of Central and Eastern Europe work with the bricks and mortar of constitutionalism, they remind free people everywhere of the never-ending commitment that liberty entails.

A. E. Dick Howard is the White Burkett Miller Professor of Law and Public Affairs at the University of Virginia. He has consulted with drafters of constitutions in Hungary, Poland, Czechoslovakia, Romania, Bulgaria, and Albania.





NOTE: ALL RIGHTS RESERVED IN THIS MAP BY THE SURVEYOR. THIS MAP IS NOT TO BE USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF THE SURVEYOR. THE SURVEYOR IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN THIS MAP.

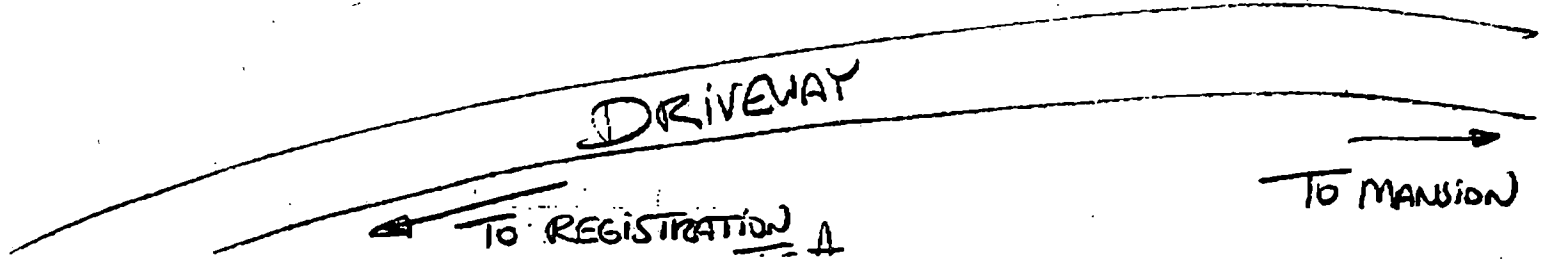
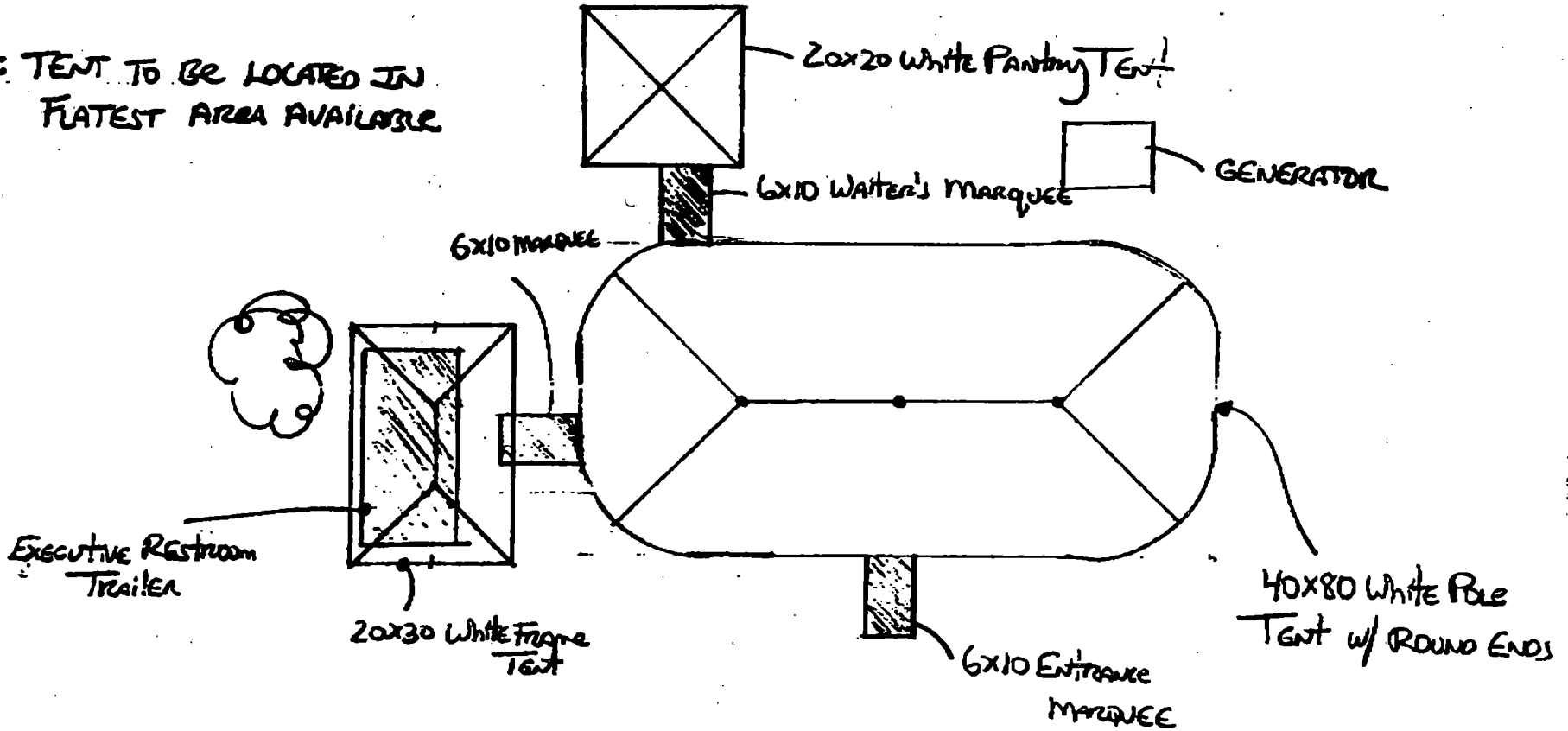
MAP OF
"MONTPELIER"
SHOWING THE SEVERAL ACQUISITIONS
ORANGE COUNTY, VIRGINIA
FOR
MARION DUPONT SCOTT
SCALE: 1" = 400' DATE: JUN. 16, 1948
J. L. SCOTT'S SURVEYING AND ENGINEERING CO., INC.
1000 W. BROAD ST., RICHMOND, VA.

Hot Chocolate/Exhibit Tent

DECEMBER 16, 1991

CLASSIC TENTS
8827 Monard Drive
Silver Spring, Md. 20910

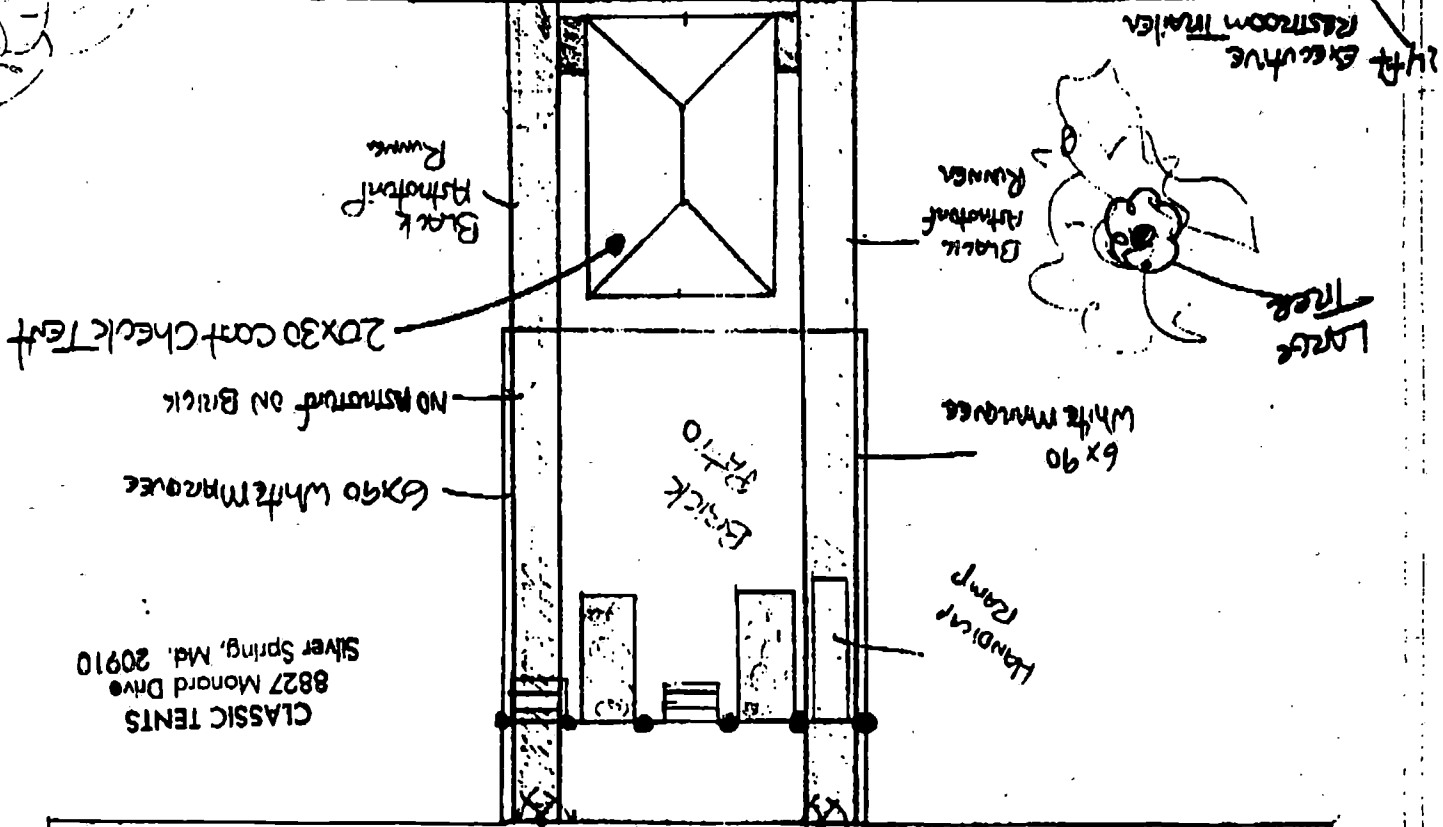
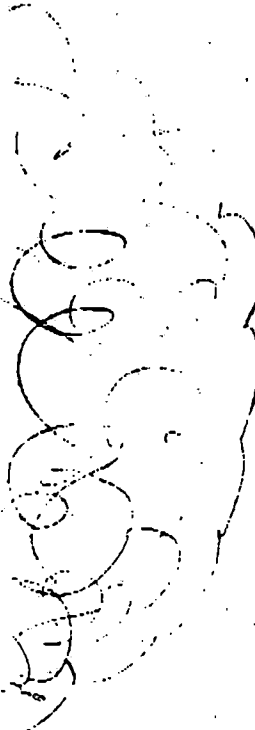
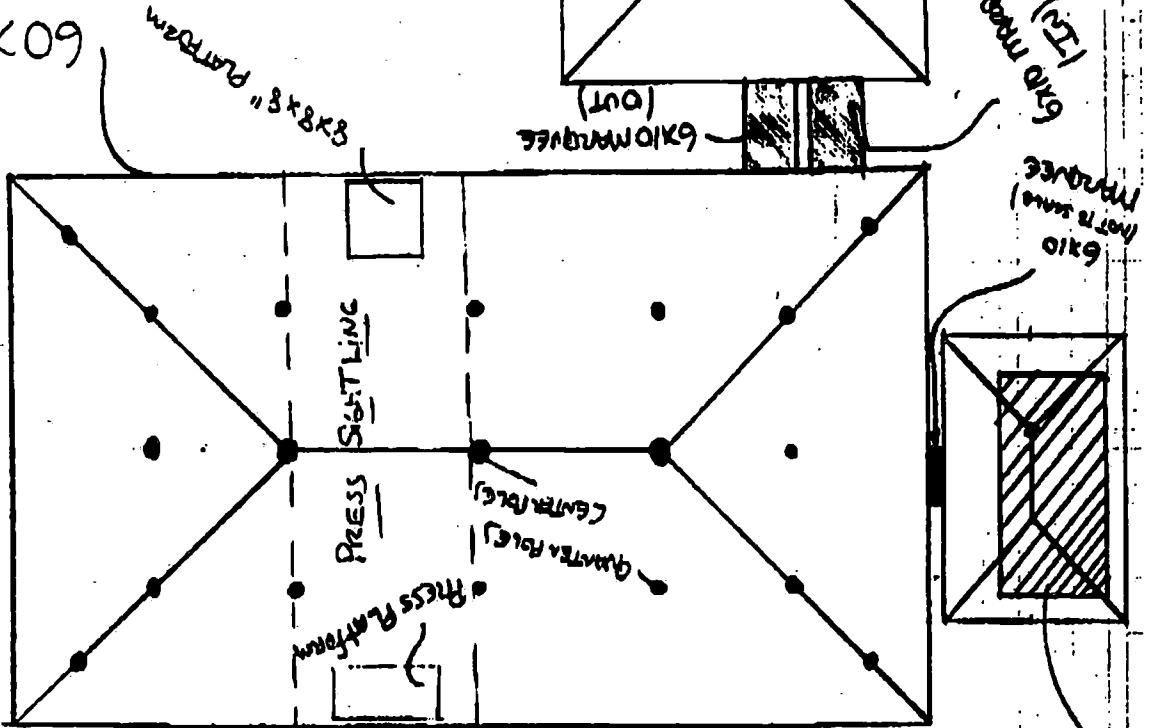
NOTE: TENT TO BE LOCATED IN
FLATTEST AREA AVAILABLE



1" = 50ft 1/4" = 1/4"

- 3- 21ft TAIL CENTER POLES
 - 12- 11ft TAIL QUARTER POLES
 - 4- 13ft TAIL OF QUARTER POLES
- Main Dining Tent

60x100

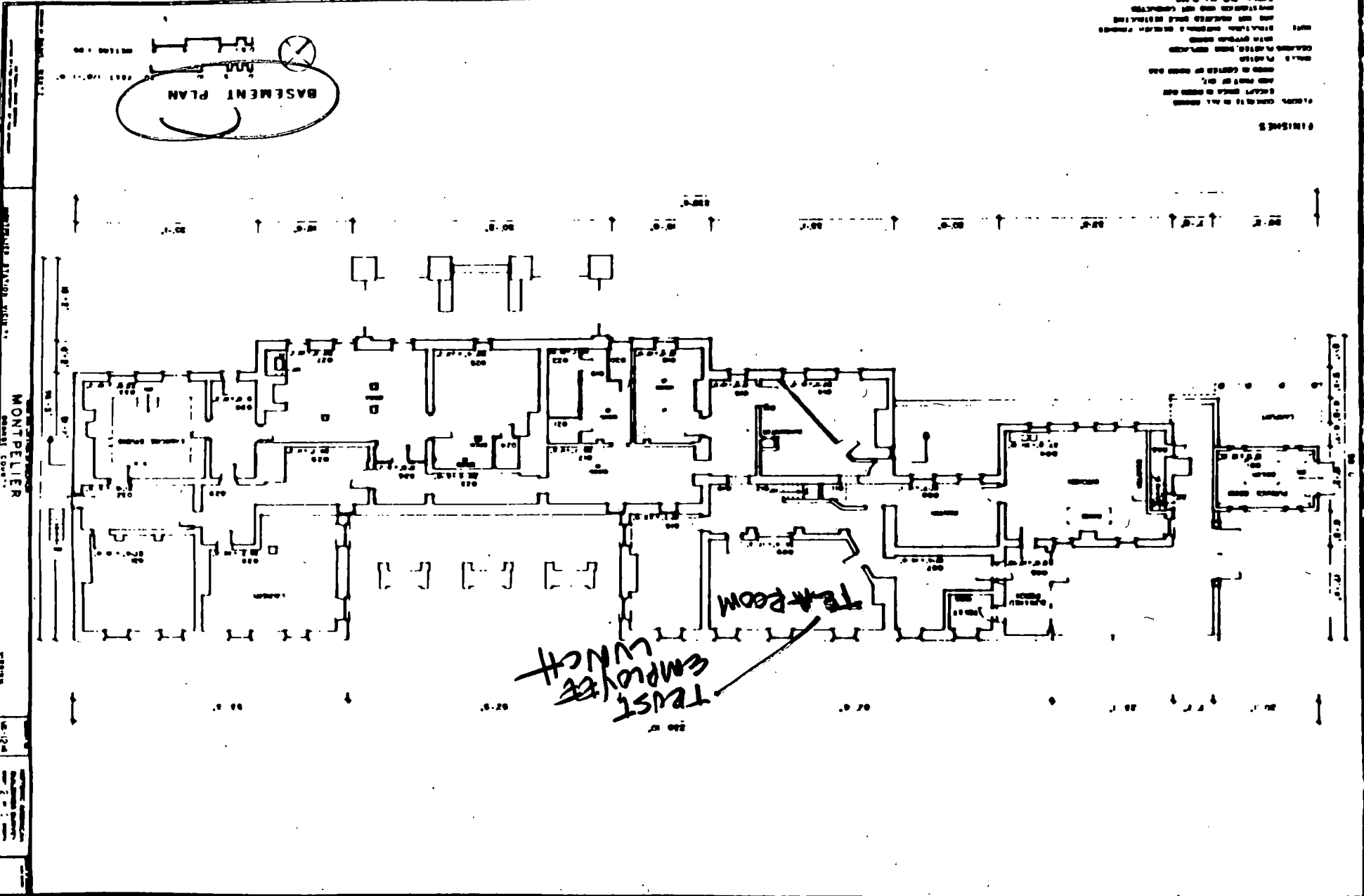


CLASSIC TENTS
8827 Monard Drive
Silver Spring, Md. 20910

MONTPELIER MANSION

BASEMENT PLAN

FINISHES
CONCRETE FLOOR
PAINTED WALLS
CEILING
WOOD FLOOR
GLASS PARTITION
ETC.



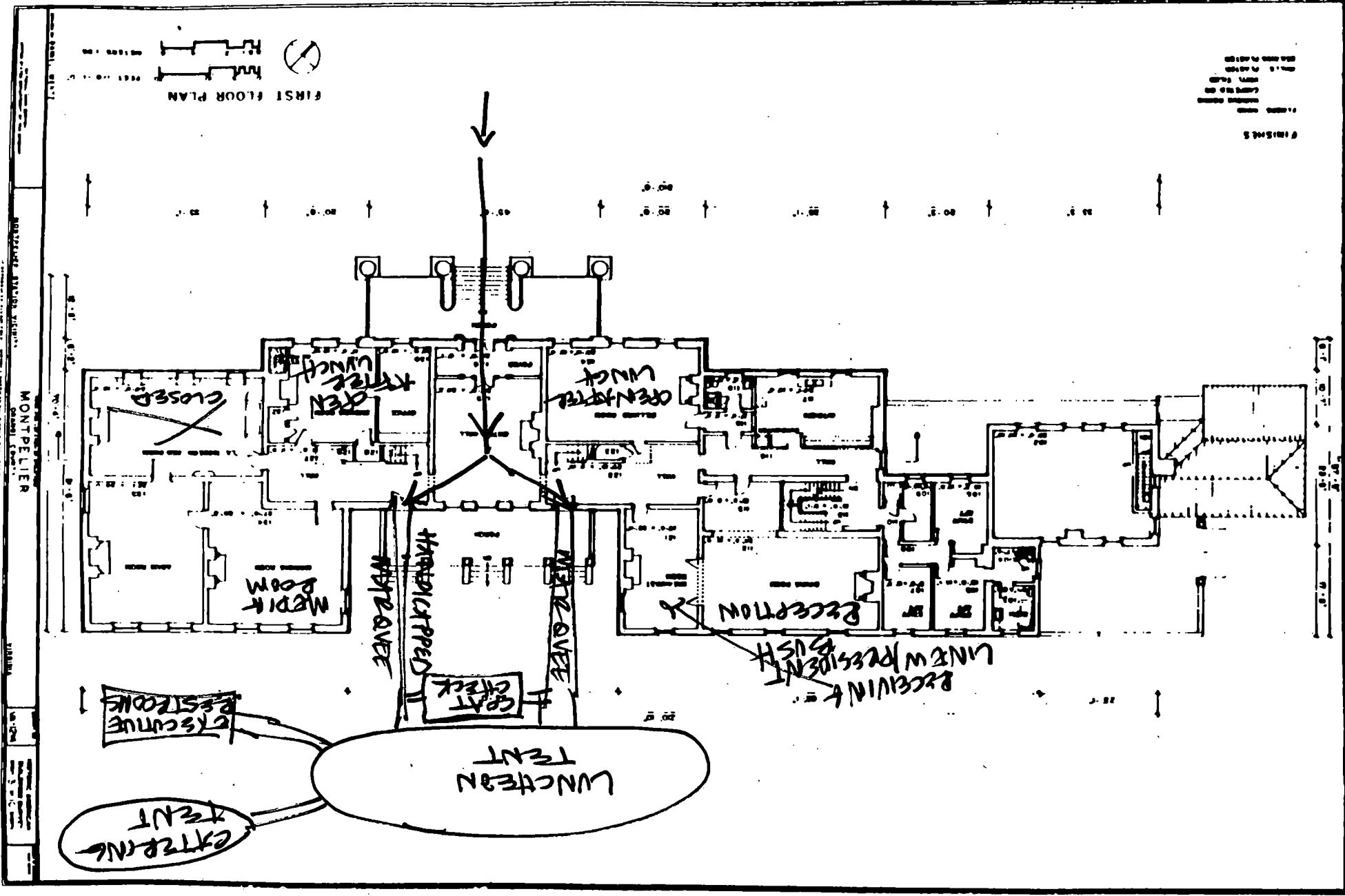
MONTPELLIER

TRUST EMPLOYEE LUNCH

TRUST ROOM

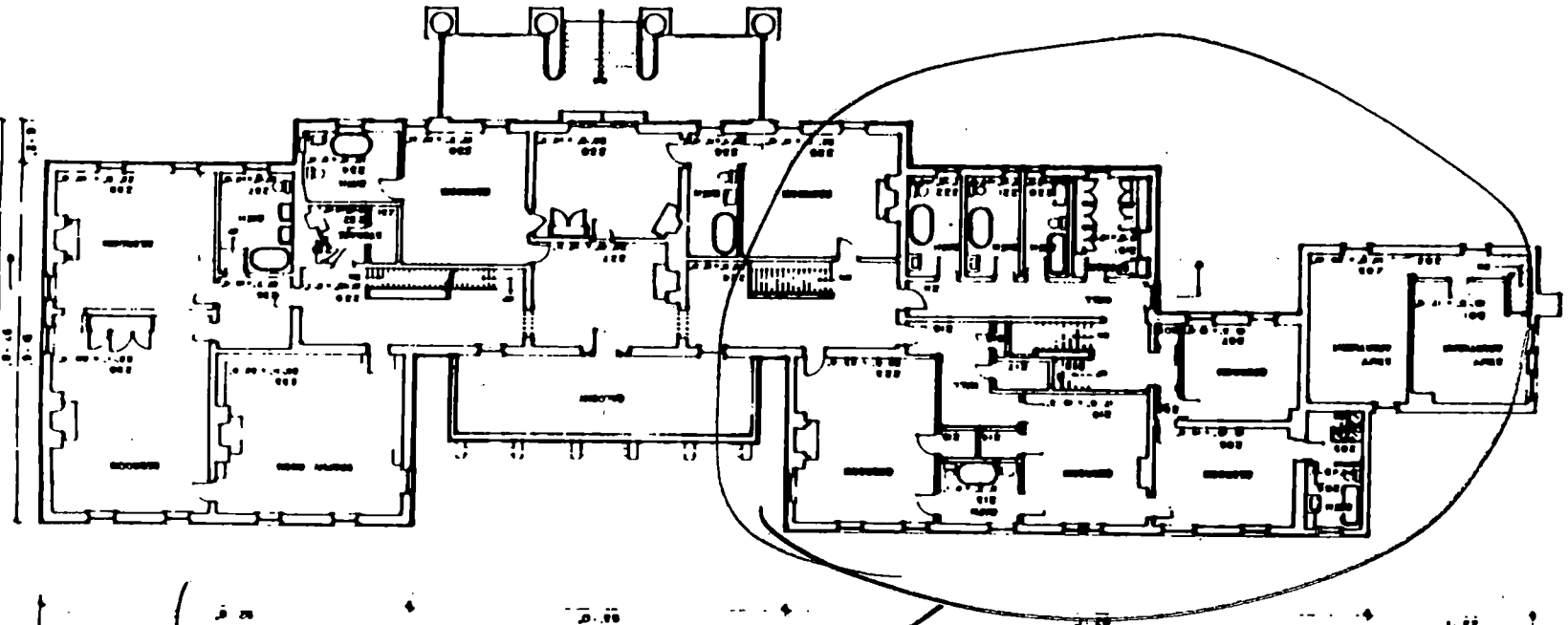
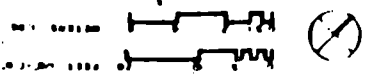
FINISHES
1. FLOOR
2. WALL
3. CEILING
4. DOOR
5. WINDOW

FIRST FLOOR PLAN



FINISHES
1. WALLS
2. FLOORS
3. CEILING
4. LIGHTING
5. PAINTS

SECOND FLOOR PLAN

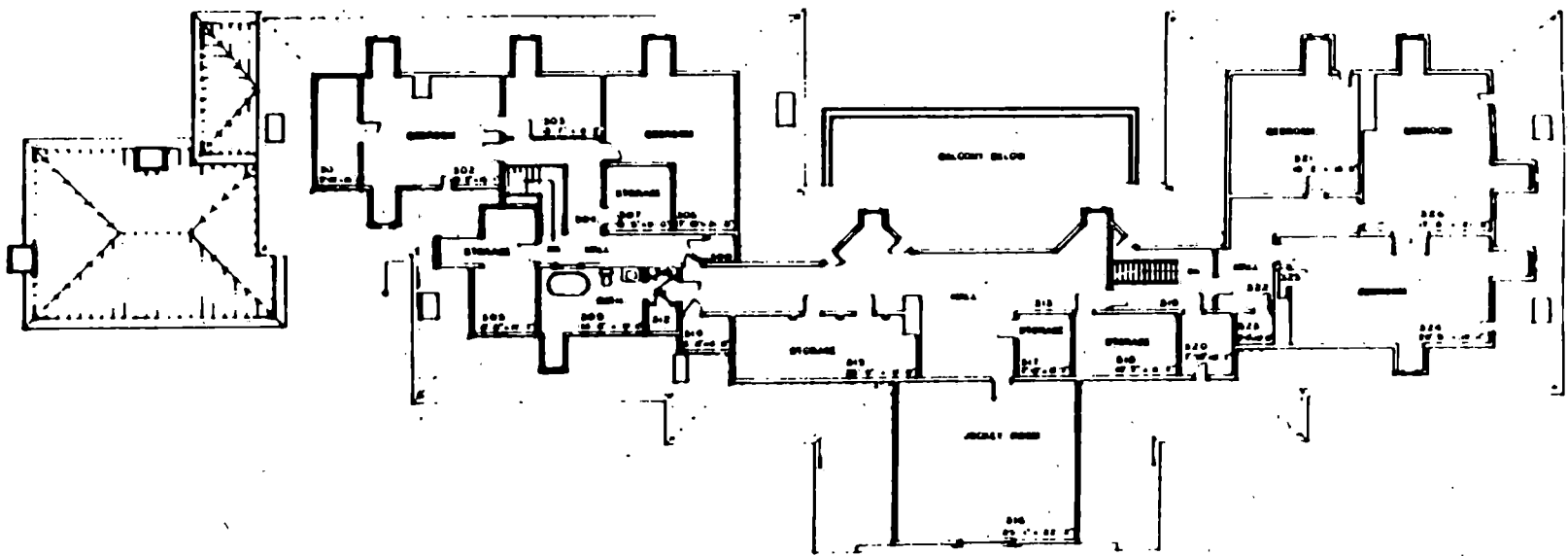


AREA RESERVED + CLOSED OFF
FOR WHITE HOUSE ONLY

MONTPELIER
SMALL SHOP

DATE: 10/1/54
DRAWN BY: [illegible]
CHECKED BY: [illegible]

NOT USED
CLOSED



LEGEND
1. WALLS
2. DOORS
3. WINDOWS

THIRD FLOOR PLAN
1" = 10'
1" = 20'

U.S. GEOLOGICAL SURVEY
WATER RESOURCES DIVISION
MONTPELIER CANAL LOCK
MONTPELIER, VERMONT
1968



City/State: Orange, Virginia

Event: Congress' 200th Salute

Date: December 16, 1991
MONDAY

OFFICE OF PRESIDENTIAL ADVANCE CONTACT SHEET

Name	Office	Phone Number
Presidential Advance Office		202/456-7565
Presidential Advance Fax Number		202/456-2820
Mel Lukens	Deputy Dir. Pres. Adv.	202/456-7565
Brian Montgomery	Press Representative	
Suzanne Faulk	Trip Coordinator	"
CLAUDIA PETERS	POWELL TATE - EVENT COORDINATOR	202- 347-6633
Christopher Scott	Montpelier	(703) 672-2728 #
DOUGLAS MACKENZIE	LEAD ADVANCE	HOLIDAY INN - CULPEPPER
Bob Simon	WH Speechwriting	202-456-7750
MAJ THOMAS PROVINCE	VSDP	703-948-6884/4628
Sgt Jean D. Compton	VSDP	703-937-6136
Bob Underhill	U.S. Secret Service	804/771-2274
Charlie DeVita	USSS - PFD	(202) 395-4011
Ron Shell	USSS - Richmond	804-771-2274
ROB CREAMER	MARINE ONE ADVANCE	703-640-2364
John Thomas	marine one Advance	202-395-2034
SANDRA ROSS	DESIGN CUISINE	703-979-9400
Donna Bedwell	montpelier	703-672-2728 (w) 672-5830 (H)
THOMAS A. CIPIU	CLASSIC TENTS	301-588-3181 (wk) 301-916-0716 (Hm)
Carolyn Shields	Powell Tate	202-347-6633
Mike Gould	Military Aide	202-395-2000
BOB STEELE	W.H. COMMUNICATIONS	202-395-4040
Greg Dustin	WH Communications	(602) 856-3343
Rob Vincent	W.H. Ambulance Personnel	Holiday Inn Culpepper
Kathy Cox	National Trust	202-673-4089



200TH ANNIVERSARY
THE BILL OF RIGHTS

BACKGROUND

HOW OUR BILL OF RIGHTS CAME TO BE

It is fitting that the Commonwealth of Virginia's original copy of the Bill of Rights be the one exhibited in the 50-state tour celebrating the Bill of Rights bicentennial presented by Philip Morris Companies Inc., because no other state had a greater influence in the development and passage of that historic document which protects the individual freedoms of American citizens.

After winning independence from Great Britain in 1783, the young United States faced a perilous and uncertain future. The government, established by the Articles of Confederation, was decentralized. The republic had no executive branch and no national court system. The government could not raise taxes or regulate trade.

-more-

PHILIP MORRIS COMPANIES INC.

KRAFT GENERAL FOODS MILLER BREWING COMPANY PHILIP MORRIS USA

120 PARK AVENUE
NEW YORK, NEW YORK 10017
(212) 880-5000

The lack of a centralized government under the Articles of Confederation allowed each state to circulate its own currency and tax the goods and produce of other states. The lack of an executive under the Articles of Confederation made international negotiations over trade, commerce, and issues of war and peace more difficult.

Many leading statesmen of the time, including George Washington of Virginia, thought that a stronger national government was necessary for the country's welfare. They believed that a national government should have the power to collect taxes, pay its debts, regulate trade, deal with Indian tribes and negotiate with foreign governments. In short, they saw the need for a government which had enough control over the states and its citizens to provide for their common good and which could also win the confidence of foreign nations.

Largely through the efforts of James Madison of Virginia and Alexander Hamilton of New York, the states endorsed a call for a convention to amend the Articles of Confederation. The convention met between May and September 1787, at Independence Hall in Philadelphia. George Washington served as president of the convention. Twelve states sent representatives. Only Rhode Island refused to participate because it did not want a federal government to interfere in any of its affairs.

Delegates to the Constitutional Convention included some of the older, more experienced statesmen in the new republic such as 81-year-old Benjamin Franklin of Pennsylvania, Roger Sherman of Connecticut, and George Mason of Virginia, as well as innovative young men in their twenties and thirties such as Alexander Hamilton, Gouverneur Morris of Pennsylvania and James Madison.

Others included General Charles Cotesworth Pinckney of South Carolina, James Wilson of Pennsylvania and John Dickinson of Delaware.

But some notable leaders of the time were conspicuously absent. John Jay of New York and John Hancock of Massachusetts were not appointed as delegates to the convention. Thomas Jefferson of Virginia and John Adams of Massachusetts, who were most responsible for drafting the Declaration of Independence, were occupied with government duties abroad. Patrick Henry of Virginia, whose "...give me liberty or give me death!" speech had fanned the flames of revolution, was appointed a delegate from Virginia but refused to serve because he so strongly opposed granting more power to the national government.

The delegates convened in the Pennsylvania State House "Assembly Room," the same room in which the Declaration of Independence had been adopted and in which the Articles of Confederation had been debated.

Gouverneur Morris was assigned to put the convention's resolutions and decisions into a polished form, and thus is the man who actually "wrote" the document. After a summer of debates and compromises, 39 of the 55 delegates signed the new national Constitution on September 17, 1787, and agreed that each state should hold a special convention to discuss, vote on, and approve it. They also agreed that at least nine of the 13 states in the union would have to ratify the document before it would become effective.

Throughout the states, however, there was widespread opposition to the new Constitution.

There was apprehension that it gave the president too much power, that the Senate was too much like the British aristocracy in the House of Lords, and that the national government had been given too much authority.

But the primary objection was that the Constitution did *not* contain a bill of rights protecting individual freedoms. Before the Revolution, the colonists claimed certain rights and liberties under British law. During the Revolutionary War period, most of the states wrote their own constitutions. These documents all included some written protections of individual rights.

The first state to adopt a specific bill of rights was Virginia. Many other states subsequently modeled their bills of rights after the Virginia Declaration of Rights of 1776.

Several influential members of the Constitutional Convention had refused to sign the new Constitution because it did not include a bill of rights insuring individual freedoms. Outspoken dissenters included George Mason, author of the Virginia Declaration of Rights, who complained to the Constitutional Convention, "There is no declaration of rights." Elbridge Gerry of Massachusetts later explained he did not sign the Constitution because, "The liberties of America were not secured."

Thomas Jefferson, serving as U.S. minister to France, wrote Madison, expressing his concern over "the omission of a bill of rights...providing clearly...for freedom of religion, freedom of the press, protection against standing armies, and restrictions against monopolies."

When the draft Constitution was presented to the states for ratification, the North Carolina convention refused to support the Constitution until a bill of rights was issued.

The concern over a bill of rights was so deeply rooted and widespread that the Constitution might never have been successfully implemented in 1788 if the federalists who supported it had not yielded to public demand for a formal bill of rights. It was clear that Americans were willing to adopt the new Constitution—if they had assurances that a bill of rights would be added.

Of the states which did ratify the new Constitution, Massachusetts, Maryland, South Carolina, New Hampshire, Virginia and New York approved it—with a formal recommendation that amendments be added.

Aware of the deep public feeling on this issue, Washington, in his first inaugural address (drafted by his friend, Madison), urged the new Congress to move swiftly to propose amendments showing "a reverence for the characteristic rights of freemen and a regard for public harmony."

Madison, who had been elected a representative from Virginia, also wrote Congress' reply to the president, agreeing that a bill of rights was needed.

Because of his thoughtful speeches and behind-the-scenes efforts to attain compromises and a final accord, Madison earned the title, "Father of the Constitution," from his fellow delegates to the Constitutional Convention. He is justifiably called the "Father of the Bill of Rights" as well, for no one played a more influential role in the ultimate adoption of our federal Bill of Rights than Madison.

During his campaign for election to the House of Representatives, Madison promised his constituents that he would support amendments to the Constitution to protect "the rights of conscience in the fullest latitude, the freedom of the press, trials by jury, [and guarantee] security against general [search] warrants." On May 4, 1789, Madison announced to the first House of Representatives his intention to fulfill this promise, and on June 8, 1789, Madison proposed a long series of amendments to the Constitution.

His proposals were actually a distillation of the numerous recommendations suggested by the state conventions which had met to ratify the new Constitution. Eliminating duplications, there were about 80 proposals of substance, and Madison rewrote them to give them strength, substituting the imperative "shall" for the "ought" and "ought not" in amendments suggested by the ratification conventions.

He was also careful to select issues which would not cause controversy or dissent among the states or their representatives in the new Congress, saying, "I shall not propose a single alteration but is likely to meet concurrence required by the Constitution."

Congress spent nearly four months debating, modifying, combining, and rewording the proposals made by Madison. Madison initially did not propose a bill of rights per se, but rather a series of amendments to various sections of the existing Constitution. One useful change, suggested by Roger Sherman and incorporated by the House of Representatives, was to have a formal series of amendments that would stand on their own.

On September 25, 1789, the House and Senate at last passed a joint resolution proposing 12 amendments to the Constitution, and signed copies of the joint resolution were sent to the states by President Washington for ratification.

When Congress proposed the 12 articles to amend the Constitution, the Union was made up of only 11 states, which had ratified the Constitution. But while they were considering the amendments, North Carolina, Rhode Island, and Vermont also ratified the Constitution and joined the Union, bringing the total number of states to 14. Thus, to achieve the three-fourths majority needed to ratify the proposed amendments as required by the Constitution, the approval of 11 states was necessary.

Ten of the 12 proposed amendments were ratified a little over two years after they were sent to the states. Articles 1 and 2, however, did not receive the support of three-fourths of the state legislatures and therefore were not ratified. Article 1 dealt with the size of the House of Representatives and would have changed representation from one per 30,000 citizens to one per 50,000. If this article had been ratified, today we would have about 5,000 members of the House of Representatives. Article 2 dealt with congressional salaries. It would have prohibited any sitting Congress from raising its own salary. All salary increases would be prospective and would only go into effect for a future Congress.

Finally, on December 15, 1791, now known as "Bill of Rights Day," Virginia became the 11th and final state needed to ratify articles 3 through 12, and these articles became the first 10 Amendments to the Constitution, our Bill of Rights.

Thomas Jefferson, serving as secretary of state, announced the ratification of the amendments in a letter to state governors on March 1, 1792.

RATIFICATION OF THE BILL OF RIGHTS

The dates the (12) proposed Constitutional amendments were confirmed by state legislatures were:

New Jersey	November 20, 1789	Articles 1 and 3-12
Maryland	December 19, 1789	Articles 1-12
North Carolina	December 22, 1789	Articles 1-12
South Carolina	January 19, 1790	Articles 1-12
New Hampshire	January 25, 1790	Articles 1 and 3-12
Delaware	January 28, 1790	Articles 2-12
New York	February 27, 1790	Articles 1 and 3-12
Pennsylvania	March 10, 1790 September 21, 1791	Articles 3-12 Article 1
Rhode Island	June 7, 1790	Articles 1 and 3-12
Vermont	November 3, 1791	Articles 1-12
Virginia	November 3, 1791 December 15, 1791	Article 1 Articles 2-12

Massachusetts, Connecticut, and Georgia did not ratify the first 10 amendments until the sesquicentennial celebration of the Constitution in 1939.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

*of the
guilty*

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

*Amends
9
is...*

Montpelier Reconsidered

IN DEFINING THE ROLE OF JAMES MADISON'S
ANCESTRAL VIRGINIA HOME, THE NATIONAL TRUST
BREAKS SURPRISING NEW GROUND. BY KIM KEISTER



A circa 1836 engraving of Montpelier
VIRGINIA STATE LIBRARY

It has been said that America's greatest contribution to western civilization is the thinking of James Madison. Undoubtedly, there are those who would dispute this statement, but there can be no argument with the fact that Madison—Enlightenment philosopher, father of the Constitution, architect of the Bill of Rights—deserves much of the credit for shaping the framework of modern democracy. And yet while scholars continue to probe his *Federalist Papers* for new insight or heretofore unexplored nuances of thought, the significance of Madison's work—of the challenge his ideology posed to the eighteenth-century orthodoxy that held that a republic established in a large territory with a large population cannot endure—eludes the public consciousness. It is precisely this lack of awareness, however, that is driving the National Trust's reexamination of the role that Madison's ancestral home, Montpelier, will play in the Trust's collection of historic properties. Montpelier's future as a national monument to Madisonian thinking is now in the making.

The last of the Founding Fathers' homes to pass into public hands, Montpelier, located in Orange County, Virginia, was, at the time the Trust acquired it in 1984, a radically altered, run-down mansion with a thinly documented history sited on acreage ten times larger than any other Trust-managed property. After scrambling to prepare the property for its public opening on March 16, 1987 (Madison's birthday in the Constitution's bicentennial year), the Trust initiated a period of self-study for Montpelier that incorporated such components as historic structures reports, a long-term plan, interim interpretation, research, and deliberation—all of which were debated during a 1989 conference of preservationists, historians, archaeologists, decorative-arts scholars, horse-racing enthusiasts, and Orange County politicians. Their consensus, subsequently adopted as National Trust policy: Preserve the grounds and the exterior of the mansion much as they are—i.e., largely representative of the du Pont family's long occupancy—but restore the interior Madison spaces where such restoration can be supported by research. The ensuing search for

PHOTOGRAPHY BY ROBERT LAUTMAN

ness of the National Trust "to make itself available to local attorneys and work with them and to be fearless about litigating when it becomes necessary" has had the effect not only of lending power to individual struggles to conserve historic resources, but also of building up "institutional credibility and prestige for the Trust and enabling the general counsel's office to gain a very persuasive voice in negotiating settlements and dealing with the legislative process."

Leveraging meager resources into respect and influence has been one of the National Trust's most significant achievements during the last seven years. The strategy? "We deliberately spread ourselves thin," Merritt explains. "We try to help each group enough to make a difference, without pouring all of our resources into one case. We feel that overall we'll have a broader impact if we assist more local groups."

Thus, rather than involve themselves in every step of a case, Merritt and Ferster frequently find that they can provide the most help in a few hours of telephone conversation with local lawyers. For example, Robert Zoeckler, an associate city attorney for the City of Atlanta, who describes himself as "the kind of lawyer who's in the trenches all the time," can't "spend fifty hours to research obscure legal issues that relate to preservation law." He has worked with the National Trust on saving the apartment building in which Margaret Mitchell wrote *Gone with the Wind* and on Atlanta's historic preservation ordinance. "The wonderful thing about the Trust's legal department is that if you ask them for advice they'll give it to you and it'll be right." Nor is the advice general. "You don't just get a phone call that says, 'Well, you might want to look at the second paragraph.'" Instead, when Zoeckler sent the Trust a copy of the preservation ordinance, he "got a detailed response that was very practical and that went point by point by point over things we might want to consider . . . the kind of stuff that's not theoretical, but is actually something that you can put to good use."

This scenario is enacted many times each week as local lawyers and preservationists with a limited knowledge of preservation law call up the National Trust for help. "Yesterday we got an inquiry

from a lawyer working for a community on a highway controversy," says Merritt. "They haven't filed a lawsuit yet. They're trying to figure out strategically what they need to do. In just one hour on the phone we talked through a lot of really critical issues. And several times during the conversation the lawyer said, 'Oh, I'm so glad I got in touch with you.' For her this hour was pure gold. . . . We'll probably have many, many more hours of conversation, even though the Trust is unlikely to participate directly in the case. That's a great way to allocate our resources."

Many times these brief conversations—whether by telephone or in per-

ed with Willis and a number of preservation groups about various projects proposed for the area: an airport expansion, a historic-theme train, a National Register property proposed as an intermodal transit system center, and a highway dispute. Additionally, Merritt took a tour with local transportation officials, at their invitation, along the first proposed route of the new Dallas mass transit system so that they could discuss the potential impact on historic sites. "She was literally able to say to them, 'Well, you may want to think about moving this to the opposite side of the street because it'll be that much farther away from a historic site and that's going

to help you avoid problems under 4(f),' " says Willis. "With her knowledge of Section 106 [of the National Historic Preservation Act] and Section 4(f) [of the Department of Transportation Act] Betsy can provide guidance early on before there's a lawsuit. . . . I think she's the kind of person who would say, 'If you can avoid litigation, do.' "

This is true, and yet, according to Merritt, the National Trust gives advice "with the idea that the local group may have to litigate as a last resort, to keep the pressure on." Again, while avoiding litigation in this fashion is the

Trust's preferred option, the very threat of litigation sometimes provides the kind of leverage local groups require in order to be effective when faced with opposition, especially from powerful governmental agencies.

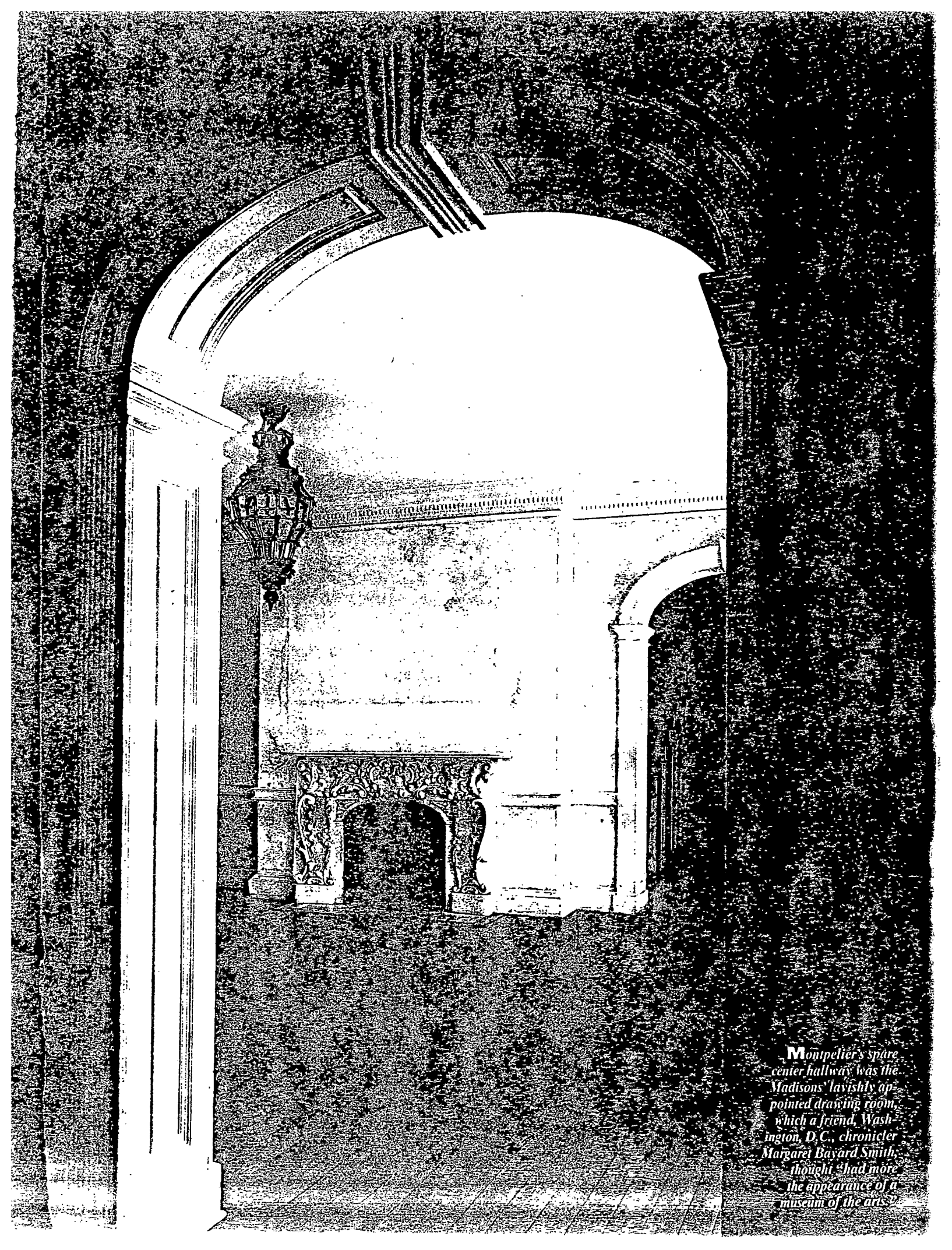
In spite of their general strategy, Merritt and Ferster are willing to roll up their sleeves and help local groups even with very little notice ahead of time. "We're fire fighters," says Merritt. "You have to have this mentality, this attitude, that part of your job is to drop everything else and respond to the unexpected crisis." For Merritt and Ferster this regularly means more than filing an amicus brief.

Perhaps the foremost example of a crisis that demanded on-site, intensive litigation was the Jobbers Canyon case, in which the National Trust acted as coplaintiff. By its very (Continued on Page 81)



"We're fire fighters," says Merritt. "You have to have this mentality, this attitude, that part of your job is to drop everything else."

son—do not directly involve lawyers or lawsuits. Libby Willis, the director of the Trust's Texas/New Mexico regional office, points out that there is a tremendous need for lawyers not only to litigate but also to help clarify issues for local preservation groups—and occasionally to meet with agencies proposing plans that may not comply with preservation laws. During a recent field visit to Texas, Merritt consult-



Montpelier's spare center hallway was the Madisons' lavishly appointed drawing room, which a friend, Washington, D.C., chronicler Margaret Bayard Smith, thought "had more the appearance of a museum of the arts."

James Madison at Montpelier has converted the property into a preservation laboratory of sorts (see Page 41), but it is a search that embraces much more than structural exploration and analysis. This is a quest for the means by which to convey what is most significant about Montpelier—that it is the place where Madison did much of his work.

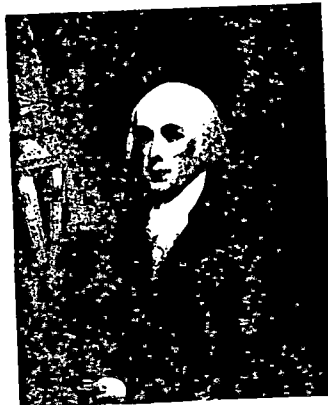
“Think of Montpelier as a tool to facilitate or assist in learning about James Madison,” says National Trust President J. Jackson Walter. “What was going on in his mind was a battle over ideas. What we have the opportunity to do is connect Madison from the time when he was sitting in his library to fights that are going on now. The kinds of tensions in government that Madison was dealing with are, in many ways, what the world is about right now. We are not in a time when the issues are about the rights of men—they are about systems of government. That’s what is going

“We are inventing something that doesn’t exist in today’s house-museum world.”

on in the Soviet Union. How do you have a federal system? What is the relationship between the Baltics and the Soviet Union, for example? These are Madisonian issues. But now how do you take that and manifest it? *That* is our challenge.”

And it is a formidable challenge indeed. For in essence, the task the National Trust has set for itself is to define Montpelier on two very separate—and very disparate—levels: as a historic property and as a center for the study of Madisonian thinking. The complexities involved in shaping this definition are enormous on both levels. To begin with, the Madison house has largely dissolved into the quite considerable renovations of subsequent owners—most notably, the du Ponts. “Although it is Madison’s house, one of the facts of the place is that it has changed a lot,” says Frank Sanchis, the National Trust’s vice president for the stewardship of historic properties. “The Trust had to decide whether to try to restore the property to a Madisonian appearance—and essentially deny the du Pont occupancy. We decided against that course. The exterior and the landscape will retain their twentieth-century appearances.”

The National Trust has also had to come to terms with the fact that because recovery of Madison furnish-



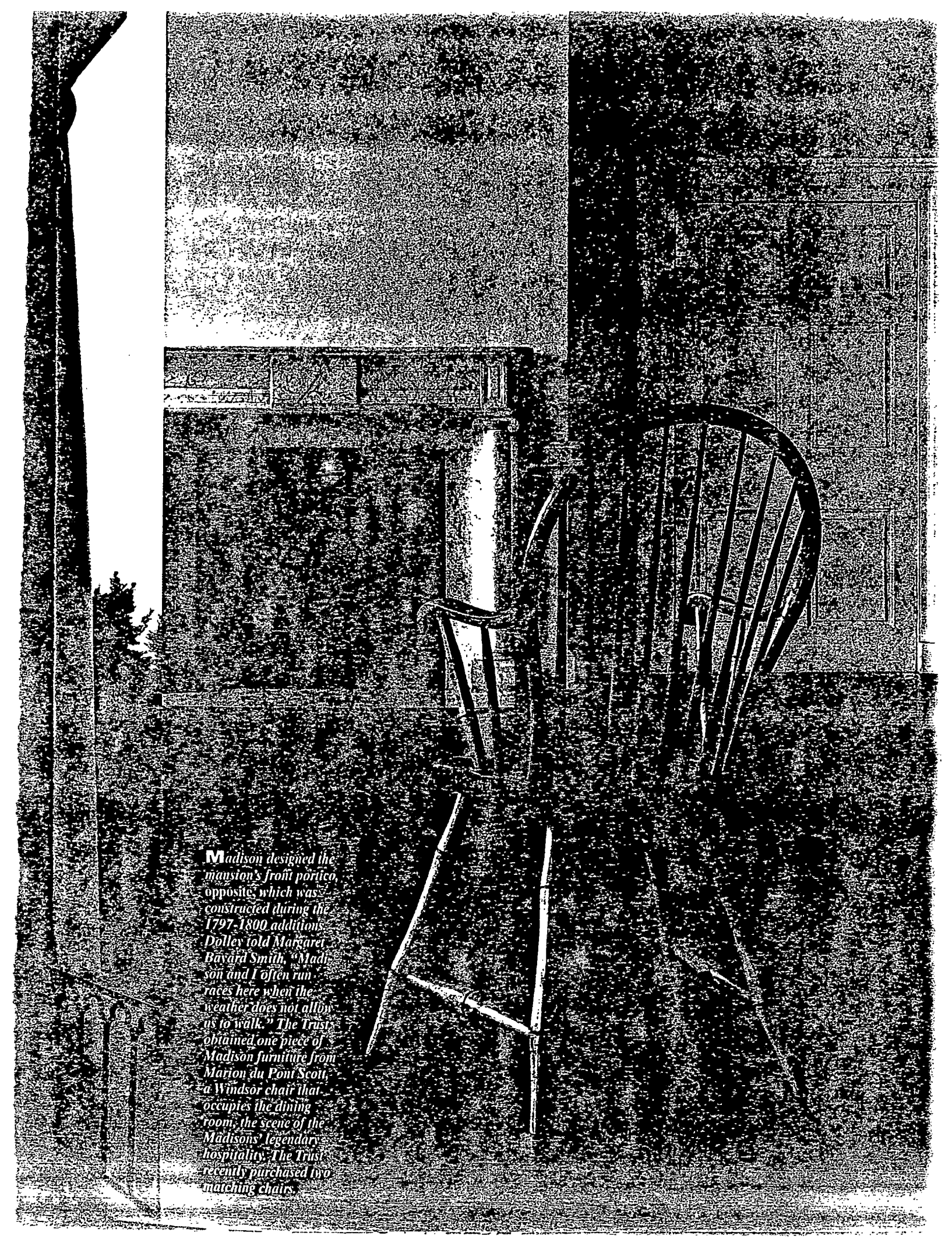
Gilbert Stuart's James and Dolley (1804) hung in the drawing room.

ings and effects would be prohibitively expensive—if in fact possible in significant quantity—the house cannot become a museum like the Trust’s other sixteen historic properties open to the public. “The word ‘museum’ shouldn’t even be used in connection with Montpelier,” says Alan Boyd, chairman emeritus of the National Trust’s board of trustees. “We are preserving concepts there, not things.”

“It has taken us seven years to accept the fact that we don’t have—and never will have—Madison’s Mount Vernon,” says Walter. “We are inventing something down there that doesn’t exist in today’s house-museum world, and no one quite knows how it’s going to wind up.”

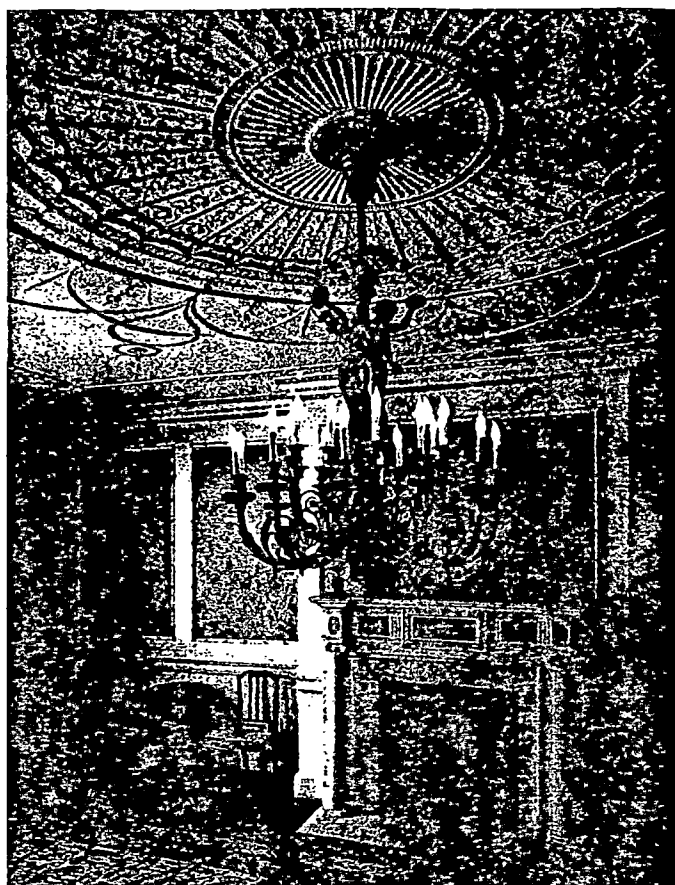
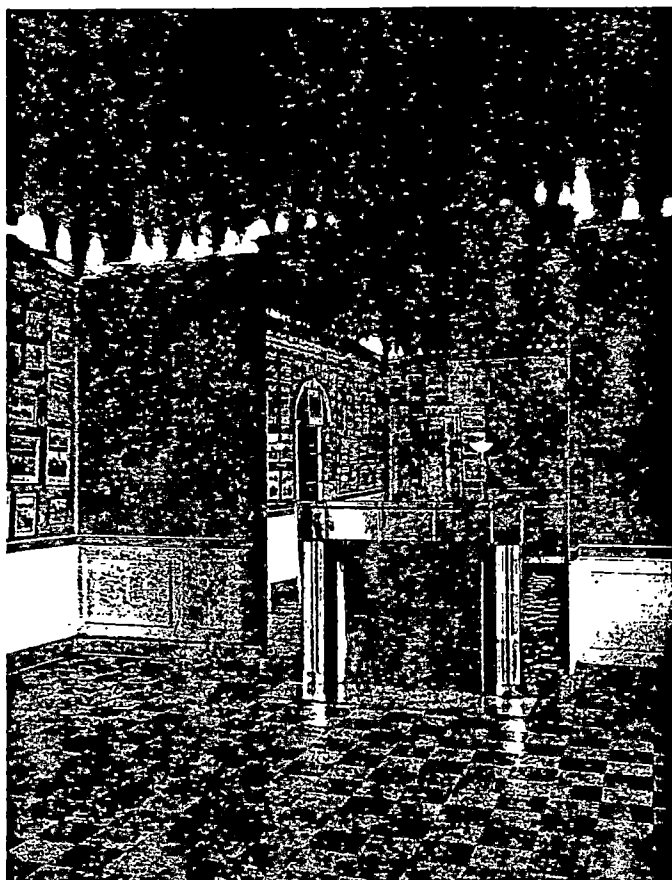
Many, of course, would be overwhelmed by the





Madison designed the mauston's front porche, opposite, which was constructed during the 1797-1800 additions. Dolley told Margaret Bayard Smith, "Madison and I often run races here when the weather does not allow us to walk." The Trust obtained one piece of Madison furniture from Marion du Pont Scott, a Windsor chair that occupies the dining room, the scene of the Madisons' legendary hospitality. The Trust recently purchased two matching chairs.

**"We don't have—and never will
have—Madison's Mount Vernon."**



Among the du Pont imprints on Montpelier are Marion's Art Deco-style shrine for her horses in the 1809-1812 south wing, left; the Drawing Room with its Adamesque ceiling, above; and the elegant formal garden believed to have been planted over the Madisons' long-neglected terraces, below.



number of pieces missing from the Montpelier puzzle. The National Trust, however, views the search for these missing pieces as a chance to advance in ways in which no other historic property has advanced to date. As Montpelier's director, Christopher Scott, explains it, "We see a series of opportunities and new dimensions to grasp hold of, and to make something that's never been made before. We should not apologize for having a really difficult set of circumstances to solve."

The search for these missing pieces was begun at the puzzle's center, the fifty-five-room mansion that is James Madison senior's house within James Madison's house within William du Pont's and Marion du Pont Scott's house. Around 1760 Madison's father, James senior, who was a planter, a contractor, a merchant, and a rising local functionary, built the nucleus of the mansion. (Late in his life Madison recalled that as a boy he carried light pieces of furniture to the new residence from the old, which local lore and preliminary archaeological investigation place on the site of ruins near the family cemetery.) Probably built to James senior's specifications of wood, bricks, and mortar produced on the grounds, the fifty-five-by-thirty-foot house—although by no standard luxurious—was impressive for its time and location.

Brought as an infant to the property that his grandfather had claimed some twenty-five years earlier, Madison (1751-1836) grew up on what was neither perilous frontier nor genteel country estate. His world was the commotion and clamor of his father's developing plantation, which was sustained by slavery, an economic dependency from which Madison never extricated himself.

For three decades, as he pursued his education, joined the Revolution, and rose to national prominence, Madison had little to do with Montpelier's day-to-day operations. He returned frequently, however—particularly at critical junctures, devoting months, for example, to an exhaustive study of world governments in preparation for the federal Constitutional Convention, at which, in the estimation of one delegate, "He always [came] forward the best informed man on any point in debate."

Small of frame and soft-spoken, "the great little Madison" (as he was immor-

Searching For Clues

Like the Blue Ridge Mountains that appear and disappear with the changing weather at Montpelier, so, too, James Madison's residency at his Piedmont plantation is alternately clear and clouded by the property's subsequent owners. Within his mansion and on his grounds a team of preservationists searches intently for every clue that will bring the fourth president to the fore.

They find him—in thick hand-hewn beams, still level and true after well over 200 years; in a clay/lime composition of plaster made a century after text books say its production ceased; and in thousands of nails that were manufactured by forges that were covered by an ice house that was covered by a columned temple.

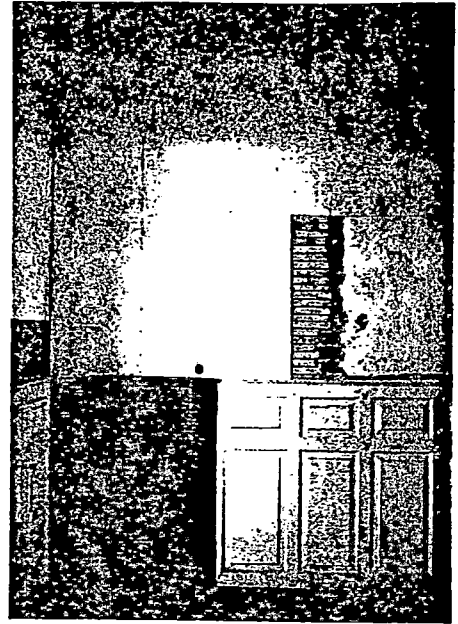
It's all part of the story of how one of our country's greatest minds shaped a Piedmont plantation—and vice versa.

Determining the mansion's Madisonian interior plan—the researchers' immediate objective—requires both patience and dedication. "Madison's house isn't encap-



sulated in there just waiting for us to crack the shell," explains Ann Miller, Montpelier's architectural historian and research coordinator.

Since April researchers have carefully removed selected sections of cracked plaster and woodwork to investigate below the surface, *above right*. They search for evidence of construction from different periods—for example, where split laths secured with hand-wrought rose-head nails abruptly give way to circular-sawn laths secured with wire nails, *above*.



The subsurface study is the third phase of investigation into the mansion's evolution. The first phase produced a conjectural plan of Madison rooms by studying such surface architectural details as changes in floor boards, stylistic discrepancies in details, and cracks in the plaster. During the second phase Miller pored over accounts written by guests of the Madisons and records from the property, the county, and old insurance companies.

Meanwhile blue plastic sheets spread about the grounds pinpoint the most recent probes of five years of archaeological investigation that have unearthed evidence of civilizations that predated Madison by thousands of years and of this century's Montpelier owners, the du Ponts.

"Madison brought us here," says architectural conservator Larry Dermody, "and he is the ultimate research goal. But it would be arrogant of us to destroy or eliminate evidence of all those people who made Montpelier their home."

The researchers will leave in place as much original fabric as possible. And recognizing that they, too, are now part of Montpelier's history, they keep a daily log of their activities and map to the micrometer every invasion of wall or earth so that future researchers will know precisely what they are working with. "It's quite possible that much more sophisticated techniques will be available in fifty or a hundred years," Miller says. "Maybe they'll have a time machine."

talized by his socially and physically more imposing wife, Dolley Payne Todd Madison) seemed an unlikely candidate for leadership. But his deep and disciplined mental capacities, fed by a voracious appetite for books on wide-ranging topics,

Madison crafted the Bill of Rights and guided it through ratification.

Madison married the widowed Dolley in 1794 and soon set about reshaping his Piedmont plantation into a seat from which he could observe the republican experiment,

and into a home for Dolley, his young stepson, John Payne Todd, and Dolley's youngest sister and ward, Anna. Between 1797 and 1800 Madison doubled the size of the house by extending it thirty feet to the north, creating, in effect, a duplex unified by a neo-classical portico. He and his new little family occupied one half, his parents the other. During an 1802 visit Anna Thornton, the wife of William Thornton, the architect of the United States Capitol, found Montpelier "susceptible of great improvements and when those [Madison] contemplates are executed, it will be a beautiful place, and resembling the elegant seats in England. . . more than any seat I have seen."

Following two terms as Jefferson's secretary of state and his own election to the presidency in 1808

produced eloquent writing and well-reasoned oral debate. Madison, more than any other Founding Father, shaped the Constitution and used his considerable powers of persuasion to secure its passage by the Constitutional Convention in Philadelphia in 1787. When the diverse interests of the

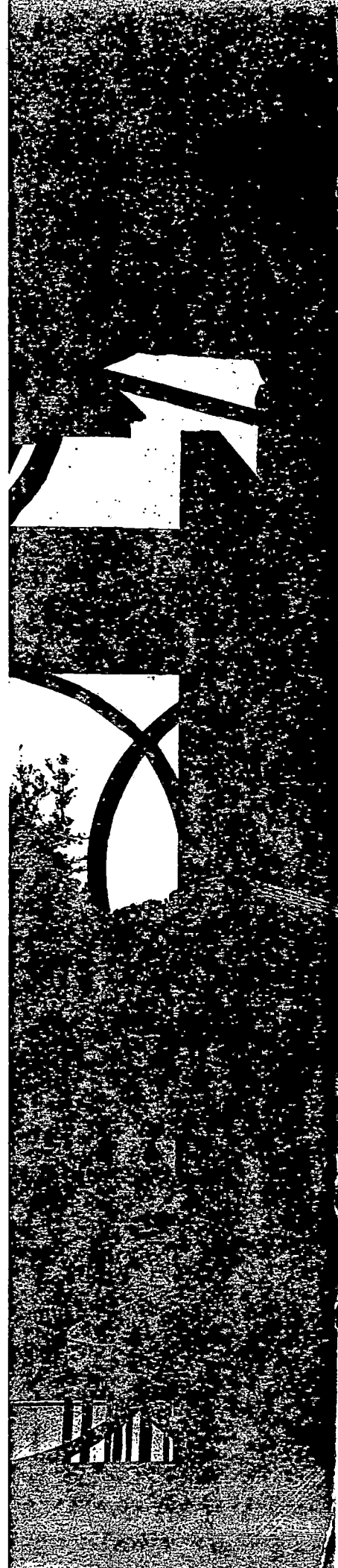
Madison added symmetrical one-story wings to the mansion in anticipation of the steady stream of visitors—the powerful, the learned, and the curious—who would descend upon Montpelier after his retirement in 1817. He and Dolley filled the house with a mix of sturdy Quaker, rural Virginia,

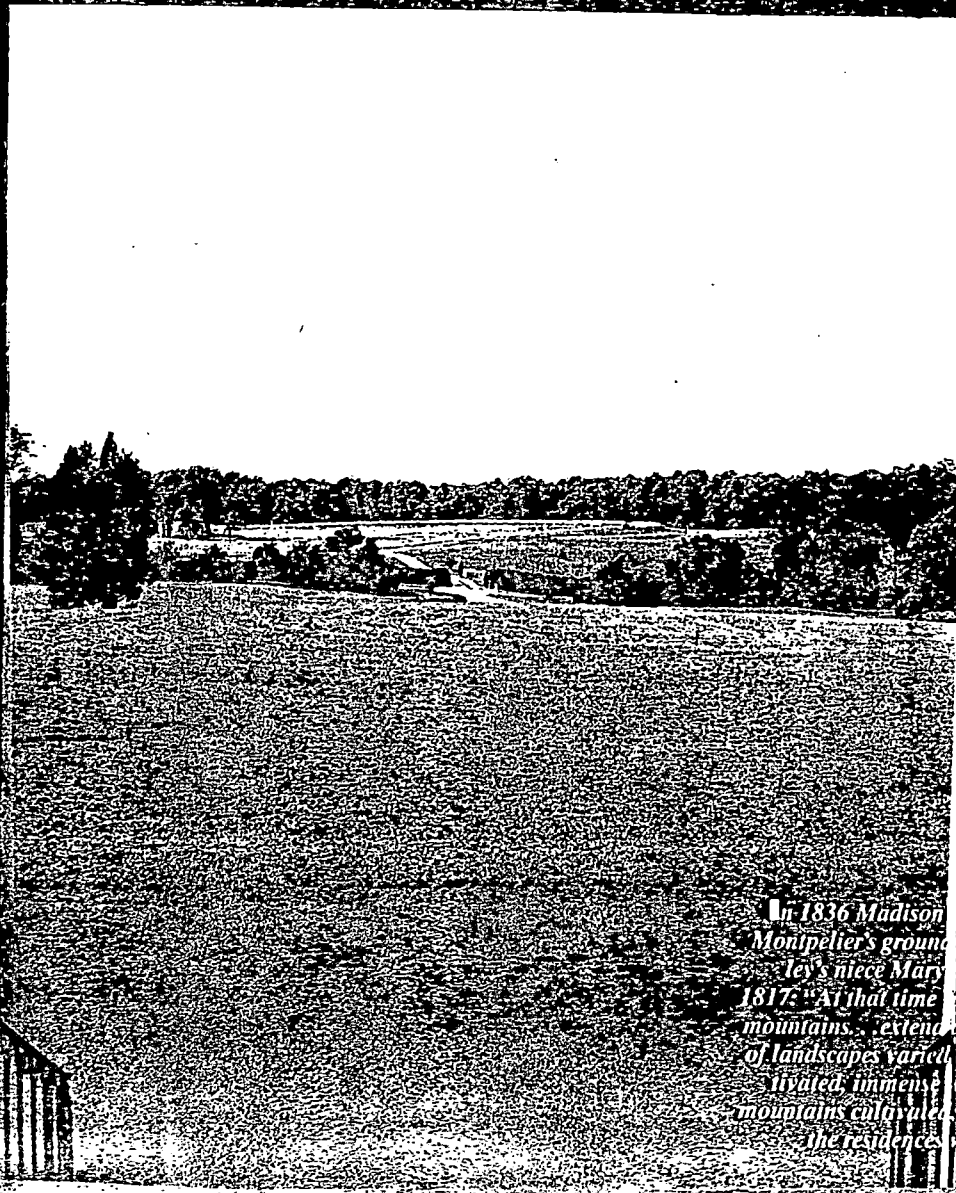
and stylish English and French furniture. Their large collection of artwork, which incorporated

The "great little Madison" seemed an unlikely candidate for leadership.

thirteen confederacies threatened ratification, Madison joined Alexander Hamilton and John Jay in composing a series of brilliant theoretical defenses published in newspapers that survive as *The Federalist Papers*. He once feared that a Bill of Rights might limit more than define fundamental liberties under the Constitution, but as a congressman from Virginia when the First Congress convened in New York in 1789,

portraits, religious, classical, historic, and landscape paintings, and many pieces of sculpture, was carefully arranged in four galleries. Trees screened the unpleasant realities of plantation life from the mansion, and terraced gardens of vegetables, fruit trees, flowers, and ornamental shrubs covered four acres. A small, round, columned temple was built over an icehouse that was built over James (Continued on Page 82)





In 1836 Madison was buried in the family cemetery, opposite, on Montpelier's grounds. The mid-nineteenth-century memoir of Dolley's niece Mary Cutis described the view from Montpelier circa 1817: "At that time Montpelier contained 2,500 acres. The range of mountains... extend as far as the eye can reach, forming successions of landscapes varied at every turn, from the wildest to the most cultivated, immense waving fields of grain, tobacco &c. in sight, the mountains elevated tho' so many miles distant, shewing distinctly the residences which were often explored with the Telescope."

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REMARKS OF WARREN E. BURGER
CHIEF JUSTICE OF THE UNITED STATES

UTAH AMERICAN REVOLUTION BICENTENNIAL CELEBRATION

Salt Lake City, Utah
Saturday, September 6, 1975
8:00 p. m.

THE INTERDEPENDENCE OF OUR FREEDOMS

If I were to give a title to what I want to say tonight, in this Bicentennial program, I think I would call it "The Interdependence of our Freedoms" and, in a sense, that is simply a more formal way of saying what the leaders of our revolution told each other, and the people, 200 years ago: we must hang together, or we will hang separately.

For 200 years philosophers, historians and political scientists have called our Declaration of Independence one of the most momentous political documents in all history. The basic ideas it advanced had been expressed many times before 1776, but never before had they been assembled and asserted in one instrument to outline a charter of liberty. It severed our political ties with the mother country, stated the reasons for that separation and became a guide for the framers of the Constitution. It gave more than independence -- it gave opportunity.

The colonists who settled on the Eastern Seaboard had to be strong, self-reliant, confident people or they would not have survived for more than a century in that primitive wilderness, and they would never have succeeded in turning it into a thriving, orderly society. Those qualities

enabled them to carry on from the landing at Jamestown up to 1776. The Declaration gave new impetus to those qualities and, in turn, led to the creation of new institutions, new industries and the expansion of education without class barriers.

The Constitution that implemented the Declaration made our country the first nation in history to establish a system of government under a written document by which the people voluntarily delegated powers to a central government, organized with an ingenious system of three divided and separated departments. This mechanism provided checks and balances on governmental power which, in turn, released the creative powers of a whole people. It encouraged diversity and enterprise so they could shape their future in ways that seemed best to them.

We know that two hundred years in the perspective of history is but the "twinkling of an eye," but we can take some pride that no other people have continued so long under one written Constitution.

Some historians, philosophers and statesmen of that time, including those who welcomed our unique Declaration, were openly skeptical that the ideals it stated and the government it contemplated could really be made to work over a long period of time. They doubted that any government could survive without centralized power in the hands of a limited number of leaders with coercive powers. They did not believe that people generally had the essential qualities of goodness, virtue and self-discipline that would enable them to make decisions for the common good rather than

for their own selfish interests. The history of the human race up to that time strongly supported that skepticism. Our leaders shared that skepticism enough that they carefully divided and limited the powers of the new national government, so as to release the energies and creative powers of people and ideas and to insure that governmental power would not be used to impair the new freedoms.

Even as late as 1787, when the Constitutional Convention finished its work, a legend survives that a Philadelphia lady asked Benjamin Franklin what kind of government the Convention had created, and Franklin is said to have answered: "Madam, a Republic, if you can keep it." Even so profound a lover of liberty and independence as Franklin seemed to have some doubts whether our great experiment in government would succeed. My distinguished predecessor, Chief Justice Warren, after his retirement, wrote a book that deserves a wide audience, and he used as the title Franklin's words: "A Republic, if you can keep it."

Three factors aided the American experiment in this new kind of government: first, our geographical isolation in a rich, undeveloped continent, far removed from the quarrels of Europe; second, the uniqueness of the institutions we created; and third, the personal qualities of the people and their leaders. There is no parallel in history of three million people producing such a galaxy of remarkable leaders as those who drafted the Declaration and the Constitution.

Events of the past 15 or more years have now given rise to new doubts in the minds of responsible men and women, who are dedicated to our country and to the ideals of freedom. They ask whether our constitutional system will survive the combined pressure of a period of rapid changes -- both political and economic -- now taking place in the world, and the strident demands from a wide array of special interest groups, each clamoring for the gratification of its own demands. They point to a trend of national indulgence with the idea of instant gratification.

All this should remind us that the great sentiments of 1776 launched an experiment unique in human history -- that it was a beginning -- not an end. It should remind us of other times in our national life when the survival of our experiment in government was in doubt. At Gettysburg, Lincoln reminded Americans of the fragility of the Union, and you remember his words describing the Civil War as a test whether our nation, conceived less than 90 years earlier, could long endure. We survived that ordeal and emerged a stronger and wiser people.

Now, in this century, we have engaged in two world wars of unparalleled horror and other prolonged armed conflicts, the latest only recently terminated. The stresses on our country, especially in the undeclared conflicts, have divided our people, sapped our resources, and taxed our spirits to the utmost.

What must we do to assure the continuance of our freedoms in the complex modern world in which a change in the price of a barrel of oil, for example, can severely tax our way of life? Will we have the courage, the hardiness, the spirit of self-denial and the dedication to the common good, which carried Americans through the desperate struggles of the Revolution and the agony of the Civil War? Both these tests came in the first century of existence when we were more isolated and less dependent on events in other parts of the world. Can we adjust to these new realities of the interdependence of nations, whether the dependence is for oil, or wheat, or manufactured goods, or technology -- or the over-riding need for peace?

How and why did our experiment succeed when others had failed in the endless search for liberty with security?

In 1776, Russia and China, to mention only two examples, were equally blessed with land areas of continental proportions, each had natural resources equal to ours, each had a long tradition of culture and enlightenment, each had many millions of intelligent, skilled, industrious people. I have no doubt that those millions in Russia and China had the same natural urge for freedom as did our people, for man was meant to be free.

What was it, then, that we had that enabled us, in less than 200 years, to surpass those two countries in universal education, in science, in industrial production, in national unity and in the standard of living?

It was not simply independence from the mother country, and the new status as a sovereign nation. Far more important than the independence itself was the freedom that independence gave to each person to shape an individual future, and in doing that, to shape the course of the nation itself. That kind of freedom, unique in human history, unleashed the latent talents, the energies and the creative abilities of three million hardy people, while at the same time, the equally hardy, equally intelligent, equally industrious, equally talented people in those two other countries remained in the bonds of the past -- bonds which only now in the 20th century, they are beginning to relax.

The use of the freedoms that Americans gained in 1776 was remarkably productive because, for the most part, they were used wisely, with restraint and responsibility, and with the awareness that the gift of freedom carries with it a burden. That burden is to use it so as to insure its continuation.

That freedom, I submit, even at the risk of oversimplification, made the difference and produced the country we have today -- still imperfect, still not extending freedoms ideally, and still not sharing opportunity fully, but never static, either in terms of material improvements or in terms of enlarging and expanding our freedoms.

In observing the Bicentennial, it may be appropriate to examine, briefly, six areas of freedom that flowed from independence -- new kinds of freedom never before so widely shared.

First. The three branches of our national government must each remain strong, co-equal, and independent of the others, but we should always remember that, even though independent, they were intended to be coordinate as well as co-equal. The idea of coordinate clearly implies that the separate powers must be harmonized into a workable whole.

Second. The 50 states cannot exercise leadership in a national sense, but this does not mean they should not be allowed the independence and freedom that was plainly contemplated by the concept of federalism.

A complex of economic, social and political problems in the modern world calls for close cooperation between the national and state governments, based on the reality that those who are elected to state office derive their authority from precisely the same voters -- and usually on the same ballot -- as those sent to Washington to formulate national policy. The infinitely complicated national programs ordained by Congress are administered by great departments, usually under regulations drafted by those departments, with hundreds of thousands of staff members in whose hands rests much of the real power of day-to-day decision and policy-making.

As we begin the third century of independence, then, a major task in our federal-state relationships is to re-examine the practices of our federalism and our governmental machinery, as all machinery should be reviewed from time to time.

Third. The great institutions of America, the churches, colleges, universities, libraries, foundations, museums, and hospitals that grew under state and private control, had no parallel anywhere in the world. Their contribution to research, invention, culture, enlightenment and health is beyond measure. Over the past 40 years or more, economic pressures have led to a growing dependence by many of them on nationally administered, federally financed programs. The genius of these diverse organizations, however, arose from their independence and individuality, for we know that creative development has never flowered under rigid uniformity. Together these independent institutions opened flood-gates of knowledge and awareness of our world, and stimulated invention and technology, because a new kind of freedom of the mind and spirit was released. These freedoms made possible the most productive farms and ranches in the world and the most innovative and efficient factories and machinery whose products went into world markets on a scale unknown before that time.

We need not disparage the great work done by federal programs to recall that they were not intended to eliminate substantial state and local independence in shaping programs and policies at the grass roots of America. The concepts of a federal system of government contemplated that our people would make most of the decisions affecting their daily lives through the men and women they placed in local and state offices.

Every institution of government must always be open to examination and none deserves to be continued, without change, unless it can withstand periodic examination.

Fourth. Among the non-governmental institutions, whose freedom and independence have been major factors in our development, are the freedoms of press and speech. In the formative years, from at least 1770 onward, free speech from pulpits, platforms, and open air meetings flourished. At the same time there was a vigorous exercise of freedom of the press, both by regular newspapers, and by the great output of pamphlets, many of them authored by those who signed the Declaration and later the Constitution.

Without that free speech and a free press, it is doubtful whether the people would have been ready to support the separation from England, or whether the Constitution would have been ratified.

Even those editors who opposed ratification of the Constitution generally tended to cover the debates so that the people understood the issues. At every major turning point for 200 years, the power of free speech and a free press has made itself felt on the great issues, and the independence of each element of our social and political order has been preserved by open debate. The independence of our vital institutions, public or private, could not have survived without the protections of the First Amendment.

Fifth. Nowhere in the Declaration or in the Constitution do we find any reference to the crucial part that an independent legal profession plays in the very idea of freedom, because it was taken for granted. The fundamental principle of independence of lawyers had been established in England, and was accepted in America. The model for independence of lawyers and judges had been established by such courageous spirits as Sir Edward Coke, who forfeited his office as Lord Chancellor rather than submit to the dictation of the King, and that sainted "man for all seasons," Sir Thomas More, who calmly forfeited both his office and his head, rather than his convictions as a lawyer and judge.

We need not forego legitimate criticism of our legal institutions, or of the legal profession, to acknowledge that, as with the guarantees of free speech and press, the freedom and independence of lawyers have been key factors in our development before and since 1776. A majority of those who drafted the Declaration, and later the Constitution, were lawyers, and they knew that, along with Sir Thomas More, they were literally placing their heads on the block, or in a noose, by their acts -- if the Revolution failed.

There are many examples in our history of the courage of lawyers in the struggle to vindicate peoples' rights. Our history books tell of what the militant revolutionaries called the "Boston Massacre," when British soldiers killed a number of Americans. Those soldiers were charged

with murder and they asked John Adams to defend them. He did so, knowing well that in the heated atmosphere of that day it might spell the end of his career as a lawyer and as a political leader.

The British soldiers were acquitted by a jury of Americans and the people showed they valued the courage and independence of John Adams so much that he continued to be sought for leadership and became one of the authors of the Declaration and our second President.

Later, when Aaron Burr was indicted for treason with the prosecution instituted by President Thomas Jefferson, Virginia lawyers braved the wrath of public opinion, and of the Jefferson administration, to act as his attorneys. Burr was acquitted because the judges and jury followed the strict requirement of the Constitution that to convict for treason there must be two witnesses to the same overt act.

There are countless modern examples of the independence and courage of our lawyers, none more notable than that of my distinguished colleague, Justice Thurgood Marshall, who as a lawyer, devoted much of his life advocating the constitutional rights of one of America's largest minority groups. He succeeded in the face of personal risks and threats that have receded in memory since the events. In the two centuries between John Adams and Thurgood Marshall, thousands of lawyers have performed in the same way.

Sixth. Finally, we come to the independence of a group, in whose hands, under our system, ultimately rests the protection of all of our freedoms -- the judges who construe the Constitution and interpret the laws. Here we should remember that state judges, simply by reason of their broader jurisdiction and far greater number, are often the first line of defense of constitutional rights.

In England, the independence of judges had been firmly established by 1701. Had the same independence been extended to the royal judges sitting in the 13 colonies, one of the major grievances recited in the Declaration would not have been a problem. You recall the language of the Declaration, complaining that King George had ". . . made judges dependent on his will alone, for the tenure of their office, and the amount and payment of their salaries". The colonists rightly complained that this made many judges puppets of the King.

This explains why the Constitution expressly provided that all federal judges would hold office during good behavior, removable only by impeachment processes in the House and Senate.

There were and are risks in placing so much power in the hands of judges. It can be defended only as a calculated risk taken on the assumption that judges would exercise their great powers with restraint and responsibility. The selection process, with the Senate's power of confirmation, would minimize those risks.

There are countless examples of the appropriate exercise of this large judicial power in the defense of the rights of religious freedom, the rights of racial minorities, the right of freedom of speech and press, the right to a lawyer in criminal cases, the right not to be a witness against oneself, the right to a speedy trial, the right to equal protection of the laws without regard to race, sex, or other differences, and the right to have voting power equalized.

The very recital of these examples serves to remind us how much each freedom is dependent on other freedoms.

When attacks were made on the independence of the Judicial Branch, beginning as early as 1805, with the effort to impeach Justice Samuel Chase of the Supreme Court, and repeated as recently as the Court Packing Plan of the 1930's, it was the freedom of the press, and the independence of lawyers and of the Congress that combined to repulse those attacks, for the judges could not fight back. These freedoms survived because there were judges strong enough, and independent enough, to enforce the guarantees of the Constitution without regard to political currents or public clamor of the moment.

Thus it was that the independence that began in 1776, and the new freedoms it brought to us, released the creative energies of our people for these 200 years.

We, as trustees of those precious freedoms, have a duty to pass them on, unimpaired, to those who follow, so that they will be able to apply to the new and complex problems of the future that same kind of creativity, imagination and responsibility that was released on July 4, 1776, and over these 200 years made our country great.