

Oregon BENCHMARKS

THE U.S. DISTRICT COURT OF OREGON HISTORICAL SOCIETY NEWSLETTER

Dignity, Grandeur, and a Sense of History in One Stunning Package

The New Mark O. Hatfield Federal Courthouse

BY CAROLYN M. BUAN

When Portland's Mark O. Hatfield United States Courthouse was dedicated on Thursday, November 13, 1997, it became the third Portland building to house the U.S. District Court for Oregon. Like its predecessors—Pioneer Courthouse and the Gus J. Solomon Courthouse—the new building embodies a sense of dignity and grandeur in keeping with the court's role in society. But it does so with an eye to the future, a view toward history, and a sense of humor.

A Short History of the Courthouse Block

Portland began to develop as a viable city in the early 1850s, beating out rivals like Oregon City, Milwaukie, and St. Helens to become the region's chief port. Initially a rough collection of wooden buildings spread out between the forested hillsides and the river's edge, the old core of the city included the site on which the new Hatfield courthouse now stands—a full city block between Second and Third avenues and Salmon and Main streets.

In the 1870s and 80s, that site (Block 24) was on the edge of the city's first Chinatown, which at that time stretched approximately from Southwest Front to Third Avenue and Ash to Salmon streets. Among the Chinese businesses that occupied the block was a clothing manufacturer, a laundry, and a tenement for 46 single men. They shared the block with various Anglo tenants—among them John Gates, who later became Portland's mayor and fought against the anti-Chinese violence that infected the city.

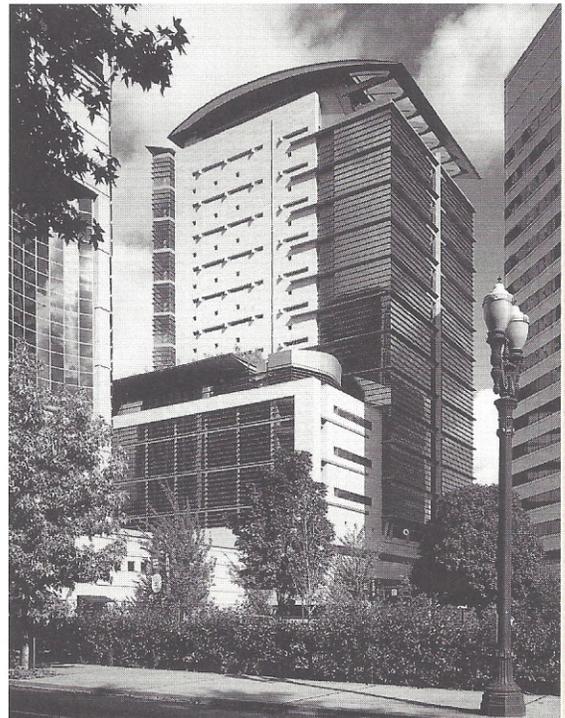
Some time after the Willamette River flooded in 1894 the Chinese moved north of Burnside Street, and by the turn of the century many of their old haunts had been replaced by new brick buildings. As the twentieth century progressed, some of these buildings grew seedy, to be replaced just recently by attractive high-rises. Today, Lowndale Square with its war memorial, the Multnomah County Courthouse, and the city's

venerable old bronze elk statute immediately to the west of the new courthouse, plus a few brick buildings to the north, are among the few remaining visual clues to the area's past.

The Courthouse's Exterior Design

Unlike the elk, which at its unveiling was proclaimed by some to be "a monstrosity of art," the new courthouse has earned more plaudits than pans. (Its price tag of ca. \$129 million, of course, has raised some eyebrows, but defenders counter that the building is designed to allow for considerable growth in caseloads, to accommodate as-yet unvented technologies, to offer

Continued on page 3



The new Mark O. Hatfield United States Courthouse, seen from the south

PHOTO BY TIMOTHY HURLEY. COURTESY OF BOONA ARCHITECTS

President's Message



It has been a long time since we published our newsletter, and you will notice that it has a new look. This is the first of three issues that we will publish in 1998. The other two will be along in July and November. In the meantime, I extend my thanks to Judge Ellen Rosenblum, who chairs our new publications committee, and to Caroline Stoel, Paula Barran, Antonia DeMeo, and Jeff Druckman, who serve on it. Ellen and her colleagues and Carolyn Buan, our editor, are responsible for a newsletter that you should enjoy.

We have a mission this year and part of it is to create opportunities for our members to get acquainted, or reacquainted, away from the office. Toward that end, mark your calendars now for the afternoon of July 16, the date of our summer social on the 16th floor courthouse terrace; the afternoon of August 30, the date of the annual picnic; and November 5, the date of the annual meeting, which this year will be followed by dinner.

With your help, we also plan to increase membership. In this newsletter is an application for membership. Make copies and encourage your colleagues to fill them out. Feel free to call Dennis Rawlinson, chair of the membership committee, or Charlie Adams or Nancy Moriarty, who are working with Dennis to increase our membership.

By increasing membership, we improve our ability to record the history of the court, which I believe is our most important charge. We do this, as most of you know, by recording the oral histories of our esteemed colleagues and judges. This requires your time and money, but those who participate reap huge rewards.

To join the ranks of oral historians, please call Sarah Ryan, who chairs the oral history committee, or any of her colleagues—Steve Brischetto, Peter Ozanne, and Norman Sepenuk. Sarah has done a superb job of organizing the oral history program, and she or any of the other three committee members will be pleased to help you get involved.

There will be more to say on these topics later. Right now, I want to acknowledge and thank Judge Owen Panner for lending his energy and wisdom to the Society and to Suzanne Urrutia and Carol O'Connell, who provide administrative support. In addition to those whose names have been mentioned, Dick Solomon and Ernie Bonyhadi continue to serve on the executive committee with distinction. They have all made my job easy.

I look forward to seeing all of you at our social events this year and to working with you to make sure the history of the U.S. District Court for Oregon is captured and presented for our generation and future generations to enjoy.

Jeffrey M. Batchelor

ANN AIKEN SWORN IN

Celebration was the order of the day when The Hon. Ann Aiken of Eugene was sworn in February 5, 1998 as the newest U. S. District Court judge in Oregon. The quiet ceremony in the Eugene Courthouse ended a three-year process for Judge Aiken, who was recommended to President Clinton by Oregon Senator Ron Wyden in January 1995 and formally nominated to the U.S. District Court for Oregon in November of that year. Instrumental in moving her nomination to a vote of the full Senate were Senator Wyden and his colleague, Senator Gordon Smith.

Judge Ann Aiken served as a Lane County Circuit Court judge from 1993 to 1998 and was a Lane County District Court judge from 1988 to 1993. A native of Eugene, she earned



Judge Aiken

her law degree from the University of Oregon Law School in 1979. She also holds a bachelor's and a master's degree in political science from the same university. She is married to James R. Klonoski and is the mother of five sons.

Judge Aiken has begun her new duties, replacing Judge Redden, who took senior status March 13, 1995.

CALENDAR

EVENTS IN THE NEW COURTHOUSE

April 15 . . . Board Meeting and Reception, 4 PM

July 16 . . . Summer Social, 4 PM*

November 5 . . . Annual Meeting and Dinner*

PLUS

August 30 . . . Annual Picnic at Sauvie Island, 2-5 PM*

* Watch your mail for invitations or call Jeff Batchelor at 778-2157

New Hatfield Federal Courthouse *continued*

maximum security, and to last well over 100 years.)

The facade fits in well with the building's neighbors. The Third Avenue side features a so-called "sidecar" whose height matches the arcades of the nearby Justice Center and Multnomah County Courthouse. Atop the sidecar is a ninth-floor roof terrace, and behind that rises the building's main tower.

Much of the courthouse exterior is covered with sheets of glass, divided horizontally by mullions. From the courthouse windows and ninth-floor terrace, visitors and employees alike can enjoy spectacular views of the city, the West Hills, the Willamette River, Mount Hood, and Mount St. Helens.

Crowning the tower is an unusual arched roof that provides excellent acoustics for the 16th floor "ceremonial courtroom" and extends out over a nearby terrace. At one corner of the arched roof, and wrapping around the top of an elevator tower, is a bit of architectural whimsy that resembles a large eyelash.

A Lobby That Bespeaks Dignity

The first-floor lobby of the courthouse is designed to underscore the dignity and high purpose of a federal court. On a high wall of green Italian marble are inscribed the words of Alexander Hamilton, "The first duty of society is justice." On the opposite wall hangs a portrait of the Honorable Matthew Deady, Oregon's first federal court judge (from 1859 to 1893). Around the lobby are three water sculptures by Californian Eric Orr, which add to the sense of serenity that permeates the building.

To the right as one enters the lobby is a display of artifacts from the archaeological dig that took place on the courthouse block in 1993, before construction began. That dig yielded clues to the types of people and buildings that occupied the site in times past. The display includes interpretive text and



PHOTO BY TIMOTHY HURSLEY, COURTESY OF BOORA ARCHITECTS

The main lobby combines green and white Italian marble walls with sleek modern lines and materials. The central wall is incised with a quote from Alexander Hamilton: "The first duty of society is justice."

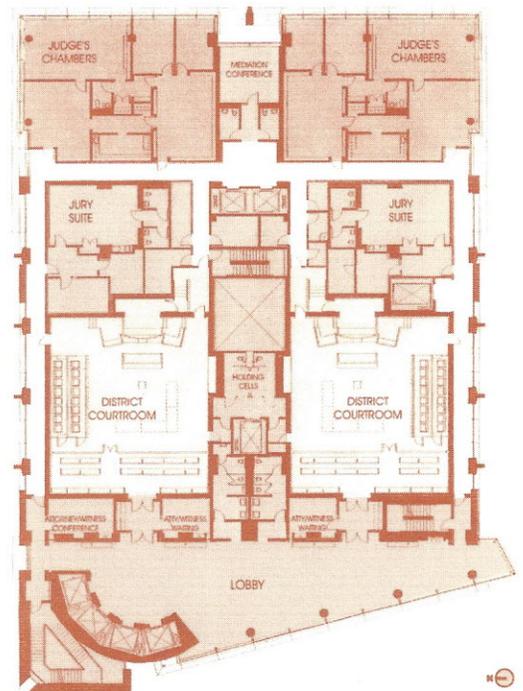
such intriguing items as bottles from a pharmacy, buttons from a Chinese laundry, ceramic fragments, and tools. Discretely displayed on a wall nearby—an ironic contrast to the historical exhibit—is an electronic information board that guides visitors to offices in the building—all with the touch of a finger on the computer screen.

At the northwest corner of the lobby along the Third Avenue side is a bank of elevators used by the public and members of the jury. (Defendants, however, are delivered to holding cells on the floors where their trials will take place through an underground sally port and their own elevator. Meanwhile, judges park in the building's basement on a different level and reach their chambers and courtrooms through a third set of elevators.)

The Courtroom Floors

On the nine top floors of the building are fifteen courtrooms—two per floor—designed for immediate use. On floors 5 through 7 there is space for six future courtrooms. On each floor, the two courtrooms flank holding cells. Behind them are matching jury suites and matching judges' chambers, which lie on either side of a mediation/con-

ference room. Secure hallways, leading to the jury suites and judges' chambers, run along the north and south exterior walls.



Courtroom floors symbolize the balance of justice, with courtrooms paired, jury suites placed between the public courtrooms and judges' chambers, and the mediation conference space set in a neutral position.

New Hatfield Federal Courthouse *continued*

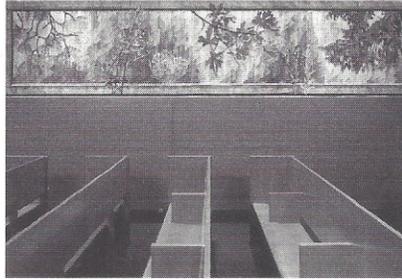
"The rule of law should be in the spirit of the man who, 2,000 years ago, taught mankind a lesson it has never learned but never quite forgotten: that there may be a land where the least shall be heard and considered side by side with the greatest. A more fitting aim for this building, its contents, and its people I cannot imagine."

—FORMER U.S. SENATOR MARK O. HATFIELD

The Courtrooms

The courtrooms themselves meld rich cherry paneling and a pleasing contemporary design that features the latest technological innovations. Lighting—controlled from the bench—is subtly designed to bring attention to the judge, witnesses, prosecution, and defense while maintaining a serene atmosphere. Sound levels are also controlled by the judge. And although the courtrooms have no windows, daylight comes in through three cleverly designed "light scoops" in the wall behind the jury box.

Via a document camera all parties in a trial can view evidence on individual video monitors—or on a large screen that descends automatically



Courtrooms are paneled in warm cherry wood. In the 16th floor ceremonial courtroom, pictured here, tapestries by Judith Poxson Fawkes are featured.

along one wall. The court reporter's shorthand is transcribed by a computer program called Real Time so it can be available immediately for reference and cross checking of tes-

timony. Such wizardry is designed to increase the efficiency of trials and reduce stress for everyone involved in them.

More Than a Little Help From the Judges

At every step of the design process, Judge Malcolm Marsh (judicial liaison with the architects) worked with the design team to make sure that drawbacks encountered in other courthouses would not beset this one. After he and his fellow judges suggested innovations, the judges and architects tested their efficacy in a full-scale model of a courtroom. The result of their efforts is an environment for trial that maximizes good sight lines and minimizes conflicts, frustrations, delays, and threats of danger.

Art, From the Sublime to the Sublimely Ridiculous

The fine hand of the judges also can be discerned in the choice of art for the building—especially in the playful bronze sculptures by New Yorker Tom Otterness which poke gentle fun at what he calls the "Law of Nature." Those sculptures depict lawyers as dogs and beavers, the judge as a wise old owl, the defendant as a cat with a feather still in its mouth, and the jury as an odd assortment of animals. These sculptures are found on the ninth floor public terrace and make a good-humored backdrop for receptions held there.

Actually, the art for this Percent-for-Art building was chosen by a committee whose members were judges, project architects, artists, and members of the public. Their charge was to purchase art from nationally recognized artists to the tune of 1/2 percent of the building's value. However, the committee decided to increase the amount spent to 1 percent, or \$1,065,000.

Besides Otterness and Eric Orr, whose water sculptures are in the building lobby, the artists chosen by the committee were Portlanders Judith Poxson Fawkes and Sandra Stone. Fawkes's elegant tapestries, with themes related to Oregon and the judiciary, grace the ceremonial



Whimsical bronze animals from "The Law of Nature" series by New York sculptor Tom Otterness hold sway on the ninth floor public terrace. The feather in the mouth of the defendant leaves little question about his guilt.

COURTHOUSE FACTS

Architects: BOORA Architects (Portland), with Kohn Pedersen Fox Associates (New York)

Lead Designers: William Pedersen (Kohn Pedersen Fox) and John Meadows (BOORA)

Costs: Ca. \$129 million, with \$106.6 million for construction and \$1,065,000 for art

Size: A full city block, containing 565,300 square feet and 17 floors

Some of the Materials Used: Covering a steel framework is an exterior that combines rusticated granite, limestone, glass, aluminum, and stainless steel and an interior that features granite and terrazzo floors, Italian marble, and warm cherry paneling.

Environmental Considerations: Seismic security and safety features that exceed requirements; an efficient use of the block that also creates an open feeling

Room for Expansion: Room for six new courtrooms

Form and Function: A design whose symmetry suggests "the balance of justice"

courtroom and its lobby on the sixteenth floor (a space where citizenship ceremonies and receptions are held), while Stone is responsible for the inscriptions in the main lobby and courtroom floor lobbies.

The Dedication

On Thursday, November 13, the new courthouse was dedicated in a moving ceremony that featured tributes to all the people who cooperated to create this wonderful building.

Throughout the speeches one theme was often repeated: Senator Mark O. Hatfield, for whom the building is named, has been a statesman of compassion and integrity and a champion of a free and independent judiciary. (As Judge Malcolm Marsh also noted, Senator Hatfield has been responsible for recommending 10 of the 21 U.S. District Court judges who have served since 1859.)

When the senator rose to accept the accolades of friends and colleagues, he used these words to remind his audience of the goal:

The rule of law should be in the

spirit of the man who, 2,000 years ago, taught mankind a lesson it has never learned but never quite forgotten: that there may be a land where the least shall be heard and considered side by side with the greatest. A more fitting aim for this building, its contents, and its people I cannot imagine.

Carolyn M. Buan is the editor of Oregon Benchmarks and owner of Writing and Editing Services in Portland.



Sen. Mark Hatfield

History-in-the-Making

By Ellen F. Rosenblum

What do *Leatherman Tool Group v. Cooper Industries* (Civ 96-1436-MA) and *Marysue Stark and Danielle Hughes v. Bridgeport Hotel, Inc. dba Sweetbriar Inn* (Civ 96-1415-JO) have in common? They both made federal court history recently by being the last case tried in the Gus J. Solomon U.S. Courthouse and the first case tried in the Mark O. Hatfield Courthouse, respectively.

A spirit of nostalgia surrounded the Leatherman trial, which in-

volved trademark rights concerning Leatherman's all-purpose tool and resulted in a plaintiff's verdict on October 17, 1997, after a nine-day trial (\$50,000 for the acts of passing off and false advertising and \$4.5 million in punitive damages). The case is currently on appeal.

Julianne Ross Davis, counsel for plaintiff, was full of good memories of her time as a clerk for Judge James Redden as she tried her last case at the Solomon Courthouse. Judge Malcolm Marsh, the trial judge, captured the feeling of the moment: "A last sad refrain—leaving a place where you've been and moving on to a bright beginning."

By contrast, the Stark trial included a sense of celebration about the new surroundings. The case involved allegations of sexual harassment by two cocktail waitresses against their supervisor. (The only named defendant was the restaurant.) It resulted in a defense verdict on October 30, 1997 after a three-day trial.

Shelly Russell, counsel for plaintiffs, commented that everyone was very much aware that this was the first trial in the new courthouse. She was particularly impressed with the new Doar presentation system which is available in the courtrooms of Judges Jones, Haggerty, and Marsh. Even though her clients did not prevail, Ms. Russell remained upbeat: "Overall, it was really exciting, both because it was my first trial and the first trial in the new federal courthouse."

Lynda Hartzell, counsel for defendant, commented on the symbolic value of this historic trial—a sexual harassment case tried by two women lawyers. Clearly, a sign of the times!

Judge R. E. Jones, the trial judge, proudly gave the lawyers in the case a tour of his new chambers. He even told the jury that they were a part of history-in-the-making by sitting on this case.

Ellen F. Rosenblum, a Multnomah County Circuit Court judge, is vice president of the U.S. District Court Historical Society board and heads its publications committee.

ORAL HISTORY NOTES

BY JIM WESTWOOD

Judge Ed Luckey's Look Back

(with some thoughts for today)

Studying recent legal history gives us more than a simple sense of continuity. It lets us chart trends in the law and its practice, compare “now” with “then,” and maybe decide whether or not some of those trends represent progress. What better way than an oral history to gain a window on our profession?

Judge C. E. “Ed” Luckey, who led a varied and productive life in public legal service, was a willing oral history subject when I asked him in 1990. He protested that his life was uninteresting (we’re about to see he was mistaken in that), but he agreed to spend about two hours with me on a sunny winter Saturday in a motel conference room where he

HISTORY MYSTERY



**Who are these men
and what are they doing?**

Be the first to mail us the correct answer, and you will receive a copy of *The First Duty*, a handsome 358-page book published by the U.S. District Court Historical Society of Oregon on our court’s history. Write to: Jeffrey Batchelor, Lane Powell Spears Lubersky LLP, 520 SW Yamhill Street, Suite 800, Portland, OR 97204.

had helped present a CLE on bankruptcy practice. Before he left to attend a grandson’s basketball game, Judge Luckey talked with my tape recorder and me about his fascinating life and legal career.

Ed Luckey’s great-grandfather homesteaded 160 acres of what now is the city of Eugene, and when Ed returned to Eugene as a bankruptcy referee in 1961, he discovered that the house he bought was on his ancestor’s claim. The lot cost him more than the original value of the 160 acres.

Born in Eugene in 1919 (1140 Patterson Street, for the curious), and losing his mother at the age of one, Judge Luckey was reared by his father and a grandmother. He attended Eugene public schools and the University of Oregon, including the law school, where he graduated with a class of eight students in 1942. The hometown boy was immediately drafted into the Army, apparently having been protected through law school by the head of his local draft board, Orlando John Hollis.

Trained as a weather observer by the Army Air Corps, Judge Luckey finally landed in the Judge Advocate’s office and served in England, France, and at war’s end in Frankfurt, Germany. In France he met his wife, Arlette, who came to the United States speaking little English after their marriage in 1946.

The Luckeys settled in Eugene, where Ed began work as the deputy Lane County district attorney. It was a two-person office in which he rose at age 27 to the post of district attorney. He was elected twice to the position—which was then a partisan office—as the nominee of both parties. Looking back in 1990, Judge Luckey remembered that no criminal trial in his 1947 to 1954 tenure as DA—including murder trials—ever took more than five days to complete. Today, he observed, “litigation seems to generate time-consuming activities but doesn’t seem to generate any better brand of justice than we used to accomplish in a short time.”

In 1954 President Eisenhower appointed Luckey to the post of United

States Attorney for Oregon. He and Arlette moved to Portland with their infant son Raymond. Daughter Marie would be born there three years later.

A highlight of Luckey’s time as U.S. Attorney was the James Elkins wiretapping trial. Portland in the 1950s was seen as an open town for gambling and vice. Jim Elkins was a financier of the illegal operations, and Jimmy Hoffa’s Teamsters Union was trying to move in. Into this mix swirled the lives and reputations of Multnomah County Sheriff (later Portland Mayor) Terry Schruck; a young U.S. senator from Massachusetts, John Kennedy; and Robert Kennedy, counsel to his brother’s Senate racketeering investigation committee. Luckey convicted Elkins (the U.S. Supreme Court ultimately vacated the conviction on evidentiary grounds), and Robert Kennedy’s disastrous performance as a witness at the trial contributed years later to his loss in the 1968 Oregon presidential primary.

With the change of administrations in Washington in 1961, and with the coincident opening of a bankruptcy referee’s position in Eugene, U.S. Attorney Luckey opted to accept appointment to the bankruptcy post. But he couldn’t leave Portland as soon as he had hoped. Senator Maureen Neuberger and Congresswoman Edith Green were at odds over whose nominee should receive a potential federal district judgeship, and the U.S. Attorney’s position was caught in the cross fire.

It developed that the judgeship did not open up, Luckey’s successor finally was appointed (it was Sid Lezak, who would go on to serve 20 years in the slot), and in July 1961 Ed Luckey was sworn into office as a bankruptcy referee by Judge Gus Solomon. Judge Luckey returned home to Eugene to begin yet another phase of his career. His tenure as a bankruptcy referee and judge, on both active and senior status, continued well into the 1990s.

Over his long career Judge Luckey noted, with regret, some developments in legal practice, such as the increasing length of criminal trials. He also observed the proliferation

of litigation under new federal statutes, which judges interpreted to create justiciable rights, as something "which a little judicial restraint early on could have prevented." Judge Luckey would have deferred to the primary jurisdiction of administrative agencies and been cautious about implying rights of action unless Congress expressed the intent to create a federally justiciable right.

Judge Luckey told me on that afternoon in 1990, "I have often suggested that we cannot have progress without change, but change is not always progress."

Ed Luckey died last year, leaving us a legacy of the finest public service, and we can be thankful that he also left us an oral history of which this article is only a small summary. The tapes and a transcript are available at the Oregon Historical Society, along with the oral histories of scores of other Oregon lawyers, judges, and political figures. It's a rich trove that gives us more wisdom for today than we often realize.

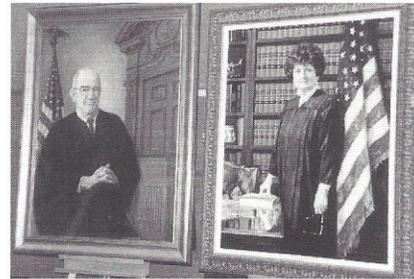
Jim Westwood is a partner of Miller Nash Wiener Hager & Carlsen in Portland and a participant in the U.S. District Court Historical Society's Oral History Project.

ANNUAL MEETING HIGHLIGHTS



During the U.S. District Court Historical Society's annual meeting on November 21, 1997, members and guests fill the jury box of the new Mark O. Hatfield Federal Courthouse's ceremonial courtroom. From left to right are (front row) Hon. James M. Burns, Pearl Jones, Hon. Robert Jones, Senator Hatfield, and Hon. John Jelderks; (second row) Hon. Malcolm Marsh, Hon. Janice M. Stewart, Hon. Ancer L. Haggerty; (back row) Joan Redden and Harry Sylvester.

(Right) Before the annual meeting began, portraits of Hon. James A. Redden and Hon. Helen M. Frye were unveiled. The paintings were commissioned by the U.S. District Court of Oregon Historical Society.



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On Our Members' Bookshelves

AMERICAN SCRIPTURE

Making the Declaration
of Independence
JULY 4, 1776.

States of America

PAULINE MAIER

The political heads which have converted them into members and to them a demand is made for the exercise of manhood, require that they be all men are equal equals, that they are embodied by their laws in the same manner as a united people, then, the same.

American Scripture, the Making of the Declaration of Independence by Pauline Maier

Recommended by Jeffrey Batchelor

In this book, acclaimed by critics as a major work, Pauline Maier, a history professor at MIT, reveals some little-known background information about the Declaration of Independence that makes for fascinating reading.

For example, she discusses the fact that “declarations” had already been adopted by various colonies and towns before Jefferson penned his version and that the language and other standard components of those documents guided Jefferson’s efforts.

The author also reveals that Jefferson’s Declaration was largely forgotten for several decades after it was written. Not until well into the nineteenth century did it resurface, to be used in support of various political causes. Among those who found it helpful was President Lincoln, who used the document to emphasize human rights and bolster Union action against the rebel states. (Needless to say, he downplayed the document’s call for revolution.) According to Maier, such uses led to the enshrinement of the Declaration as the true “American Scripture”—and to a tendency to distort its meaning. Maier’s book, which *Kirkus Reviews* calls “arguably, the best book ever written on the Declaration of Independence,” should serve to set the record straight. Says Jeff Batchelor, “I had forgotten, if I ever knew, how difficult it was for the Colonists to declare independence and how hard they tried to avoid doing so. I am sure I never knew that the Declaration of Independence is, in part, a product of declarations of independence drafted in counties and towns throughout the Colonies. Professor Maier’s book is wonderful to read.”

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Newsletter Editor: Carolyn M. Buan
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1000 S.W. Third Avenue
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