

Chicago Daily Law Bulletin®

Volume 160, No. 179

To Frank, the lawyer who wrote our anthem

To Francis Scott Key, lawyer
From Ann M. Lousin, lawyer

Dear Frank: You were a real lawyer. Though best known for your ode to our beloved star-spangled banner, few today know that you spent your entire adult life as a well-respected member of our legal profession.

Born to a wealthy family in Maryland and the beneficiary of a splendid education, you were a very successful lawyer by the time you turned 35 in 1814.

You were the U.S. district attorney for Maryland for several years. You had a thriving practice in Georgetown, then part of Maryland, that featured dozens of appearances before the U.S. Supreme Court.

You were a lawyer's lawyer.

You usually handled commercial and real estate transactions, but you were also a trial lawyer. You represented both slaveholders and freedmen. You owned slaves, but thought slavery was wrong. You, who saw America as "the land of the free," helped establish schools for free blacks.

When the War of 1812 came to Baltimore, the American authorities needed a lawyer who could approach the Royal Navy ships anchored near the city. They needed someone with diplomatic skills to persuade the British to release Dr. William Beanes, an elderly Maryland physician who had been taken as a prisoner of war.

This task required a skilled negotiator, and negotiation is what we lawyers do very well.

The authorities chose you and your fellow lawyer John Stuart Skinner to sail to the British fleet under a flag of truce and negotiate for the release of the physician.

In early September 1814, you two sailed to the British ships and began negotiations on behalf of your client. Although you were successful, the British would not permit your ship to return to Baltimore because they were about to bombard Fort McHenry, which guarded Baltimore.

During the long hours of the battle, your little ship was tied to a British ship. Although you, Skinner and Beanes were under guard, you could view Baltimore Harbor and Fort McHenry.

You could barely see through the haze and smoke of the battle. The large American flag that flew over Fort McHenry was barely discernible at sunset on Sept. 13, 1814.

As the British and American cannon exchanged volleys and the rockets burst in the air, a thunderstorm broke. Lightning and thunder matched the cannon and rockets in light and noise. It seemed impossible that the fort could hold out and that the flag would still be flying the next morning.

As the sun rose on the morning of Wednesday, Sept. 14, 1814, you could barely see Fort McHenry through the smoke. After more than 20 hours of shelling, the fort still stood. Moreover, the British had decided to withdraw.

Best of all, the battle-scarred piece of cloth was still hanging from the fort's flagpole. When a breeze caught it, you could see

LAW AND PUBLIC ISSUES



ANN M. LOUSIN

Ann M. Lousin has been a professor at The John Marshall Law School since 1975. Before then, she was a research assistant at the 1969-1970 Illinois constitutional convention and parliamentarian of the Illinois House of Representatives. Her treatise "The Illinois State Constitution: A Reference Guide" was published in December 2009. She can be contacted at Tlousin@jmls.edu.

that the American flag was still flying over Fort McHenry. It was a miracle!

You, the lawyer by profession, summoned up your inner poet and began to sketch a poem on the back of a letter. You wrote a poem about that flag: Oh, say can you see by the dawn's early light what so proudly we hailed at the twilight's last gleaming?

Shortly thereafter, the British allowed your ship to return to Baltimore. Your mission was accomplished. But something more wonderful was happening. You reworked your poem about the flag over Fort McHenry, and within days, your poem was known throughout Baltimore.

You decided to set your words to the music of a gentlemen's club drinking song that an Englishman, John Stafford

Smith, had set down on paper. You liked the music and thought it went well with your four stanzas of the ode to the flag.

Let's face it, Frank. You did not write The Great American Poem. Your lyrics are tough to follow, and the music is even harder to sing. But the combination is magnificent. The marriage of your words and Smith's music is perfect. The words and music reach our hearts and souls as no other song can.

Most importantly, you made the flag the center of American patriotism. We pledge loyalty to our country by saying, "I pledge allegiance to the flag of the United States of America, and to the republic for which it stands..." No other people regard their flag the way we do. That was your doing, Frank.

You called our flag "the star-spangled banner." Today we also call it "the Stars and Stripes," "Old Glory" or "the grand ol' flag, that high-flying flag." And, on many occasions, we sing the national anthem you wrote.

Our national song is unique. The British ask God to save their monarch. The French exhort the children of the fatherland to rise up. But thanks to you, Frank, we Americans have asked for almost 200 years if we can still see the flag flying.

When we travel around the world, we feel a sense of pride and security when we see our flag flying over American embassies.

Frank, the flag is still flying. And we're still here.

The author thanks Christine Saba and Victor Salas for their assistance with this column.