

Chief Justice John Marshall: Soldier of the Revolution

Stephen J. McEwen, Jr.

Hope for the future is an intrinsic part of the reflection that has accompanied the beginning of a new century. Quite surely, our hope for the future relies upon a trust that Providence will provide individuals of strength and character and integrity and wisdom to lead us in this new century and new millennium, just as such individuals were present to found and then shape our United States of America. As a result, thoughts at this time inescapably move to that time and to those individuals—and, for me, to a particular man, John Marshall.

George Washington will forever be remembered as the father of our country. Thomas Jefferson will live through the ages as the designer and author of our Declaration of Independence. More than a few colonial patriots could be nominated to complete a trinity of our founders, but surely the unanimous choice of those who have embraced the profession of the law must be John Marshall, the patriot so aptly designated by acclaimed author Jean Edward Smith as “the definer of a nation.”

Every American school child since 1776 has learned of the historic role played by the Liberty Bell in the founding of our country. Every school child since 1835 has been told that the crack in the Liberty Bell appeared as that historic symbol of freedom tolled the death of Chief Justice John Marshall—and, thereby, the adjournment of his 35-year term as the fourth Chief Justice of the United States, a tenure of historical proportion in itself, for it spanned the terms of five presidents: Thomas Jefferson, James Madison, James Monroe, John Quincy Adams, and Andrew Jackson.

John Marshall was an individual of many gifts, versatility, character, and accomplishment. A superb advocate, he served his country as an American Commissioner in Paris, Congressman, Secretary of War, and Secretary of State. Thus, the life of John Marshall goes

beyond epochal, while the legend of Chief Justice John Marshall is ageless. All of which has obscured *John Marshall the Soldier*.

By the time that a full decade of British oppression had escalated to the April 1775 battles at Lexington and Concord, and had inspired the bold, stirring declamation of Patrick Henry to “Give me liberty, or give me death,” John Marshall was already second in command of training and drilling a militia company of Virginia’s Fauquier County. Marshall had learned the rudiments of military drill from his father, Thomas Marshall, who was himself a versatile and powerful man, and the partner of George Washington in the surveys of Virginia and Kentucky.

That military training in the spring of 1775 would serve John Marshall in the next few months and over the next several years as he became a combat soldier in such fierce battles of the Revolutionary War as:

THE BATTLE AT GREAT BRIDGE, 1775:

John Marshall first engaged in combat against the British grenadiers at Great Bridge, in the summer of 1775, as a first lieutenant in the Fauquier Rifles of the Culpeper Minutemen battalion. The Culpeper Minutemen badly defeated the British, after several days of a battle later described as a second Bunker Hill. When the smoke had cleared and the wounded were under care, the Americans, upon the initiative of Lieutenant John Marshall, buried the British grenadiers, with full military honors, so as to salute the dignity of brave men who had died in battle in the service of their country.

* * *

NEW JERSEY/NEW YORK, 1777:

Lieutenant John Marshall and his Fauquier unit of sharpshooters joined Washington’s Army in April 1777; they were dispatched through New York into the Hudson Valley, their mission to reflect the presence of a well-armed, mobile force and thereby serve as a feint to the

main British force, which was stationed in New York.

* * *

BATTLE OF IRON HILL, COOCH’S BRIDGE, DELAWARE, 1777:

The New York British command had targeted Philadelphia, the capital and largest city of the fledging Republic, and opted for the strategy of sailing south from New York to the Chesapeake and then marching northward to Philadelphia. Washington selected the area, along the Pennsylvania/Delaware border, as the battleground, and, with the counsel of the Marquis de Lafayette, dispatched a light infantry force of 600 marksmen to harass the British advance. Marshall was one of six lieutenants assigned to this corps, which so valiantly carried out its mission of swift movement and sudden strikes at the British perimeter that the enemy commander reported that half the Americans “had shot themselves out of ammunition and carried on the fight with sword and bayonet.” It was at this Battle of Iron Hill, a prelude skirmish of the Battle at Brandywine, that the Stars and Stripes was first flown in battle, the Congress having adopted it as the American flag on June 14, 1777, just days prior to the battle. How fitting that John Marshall, a great nationalist Chief Justice, enjoys the distinction of participating in the first battle in which our Stars and Stripes were unfurled.

* * *

BATTLE OF THE BRANDYWINE RIVER, SEPTEMBER 11, 1777:

When the British commenced to cross the Brandywine River in the dawn light of September 11, 1777, Marshall’s unit was assigned to delay and harass them at Kennett. The British and Hessian troops eventually swept the main American force from the field, except for one flare-up—the light infantry of Marshall’s unit, composing an ambush rear guard, held the grenadiers at bay until finally obliged to retreat under cover of darkness. The Continental Army of Washington was

defeated at the Battle of Brandywine, but the bravery of portions of the patriot force, including the Virginia regiments, enabled defeat without devastation.

* * *

GERMANTOWN, OCTOBER 1777:

Washington, in an effort to dislodge the British from Philadelphia, attacked the main British camp on the outskirts of Philadelphia in Germantown. The most fierce skirmish of that battle occurred in the fields around the huge stone house of Tory Pennsylvania Chief Justice Benjamin Chew, a battle in which 53 Americans were killed and John Marshall suffered wounds.

* * *

VALLEY FORGE, WINTER 1777-1778:

The capture of Philadelphia by the British forced Washington to move his winter quarters to Valley Forge where the absence of food and clothing and shoes, and the presence of small pox, typhus, dysentery, and scurvy, caused 3,000 American patriots to perish. John Marshall realized that, as a commander, he was obliged to set an example for his troops, and a splendid example he was, for he has been described as a man "idolized by his soldiers and brother officers, whose gloomy hours were enlivened by his inexhaustible fund of anecdotes." Some attribute his endurance to his excellence as a runner; he also was known as the only man in the Continental Army who could high jump over six feet.

* * *

MONMOUTH COUNTY, NEW JERSEY, SPRING 1778:

The Virginia militiamen were sent to New Jersey to impede the British march to New York, and while a bloody battle, which Lafayette described as Washington's finest

hour, was fought in Monmouth County, New Jersey, Marshall and his men were not directly engaged because they were assigned to the flanks so as to prevent a British retreat to the west. It was during this battle that Marshall was promoted to the rank of captain.

* * *

STONY BROOK POINT, NEW YORK, SPRING 1779:

The fortification sites afforded by the Hudson River had given great advantage to the British, but in the spring of 1779, Marshall and his regiment captured a most important Hudson River fortification, that of Stony Brook Point. Thereafter, Marshall's men served in the force of Light-Horse Harry Lee, which seized the British fortification of Paulus Hook, a short distance from the Continental Army camp at West Point.

* * *

When the winter of 1779 arrived, Marshall was dispatched to Virginia to thwart a suspected British plan to invade the Carolinas. The invasion never came. Marshall remained in Virginia until his commission expired in February 1781; thus, the 1779 New Jersey battles were his final combat engagements. Some would assert, of course, that five years of war was quite enough.

Marshall never psychologically mustered out of the military. He relished the title of general that he subsequently earned in the Virginia militia; he peppered his conversation with military metaphors; and he unfailingly, while on the Supreme Court, went out of his way to assist former soldiers with whom he had fought, always quick to write lengthy letters in longhand to the Secretary of War attesting to the pension claims of veterans of the Virginia line.

The five years that he had spent at war and in bloody combat as a light infantry officer certainly toughened John Marshall, and while he was too modest to talk about his accomplishments, he so considered America as his country and Congress as his government that, in his words, "they constituted a part of my being."

The classic movie, *Saving Private Ryan*, recently stirred the American soul. As I viewed the film, I sensed that the suffering and horror and death experienced by the soldiers of the two armies, the Continental Army of George Washington and the GIs of General Dwight Eisenhower, were equally horrible and dreadful—just as the valor and bravery and courage exhibited by those GIs was a clear and certain reflection of the valor and bravery and courage displayed by Captain John Marshall and the light infantry minutemen of Fauquier County.



Judge Stephen J. McEwen, Jr., is President Judge of the Pennsylvania Superior Court, the intermediate appellate court in Pennsylvania. He has served on that court since 1981 and as its presiding judge from 1996 through 2001. A graduate of St. Joseph's College (A.B.), the University of Pennsylvania Law School (LL.B.), and the University of Virginia Law School Graduate Program for Judges (LL.M.), Judge McEwen was a trial lawyer, professor of trial advocacy at Villanova University Law School, twice elected District Attorney of Delaware County, and General Counsel for the Pennsylvania District Attorneys Association.

AMERICAN JUDGES ASSOCIATION Future Conferences

2001 ANNUAL MEETING

September 30-October 5

Reno, Nevada - Silver Legacy Resort
(\$89.00 single or double)

2002 MIDYEAR MEETING

April 18-20

Biloxi, Mississippi
Beau Rivage Resort & Casino
(\$119.00 single or double)

2002 ANNUAL MEETING

September 8-13

Mauai, Hawaii - The Westin Maui
(\$155.00 single or double –
golf/mountain view;

\$169.00 single or double – ocean view)

2003 MIDYEAR MEETING

Billings, Montana

(Dates and hotel to be determined)

2003 ANNUAL CONFERENCE Montreal, Quebec

(Dates and hotel to be determined)