

George Wythe

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Editor's Note: Justice Powell delivered this paper as the Society's Annual Lecture on May 14, 1990.

Justin Stanley, the President of the Supreme Court Historical Society, is a friend of many years whom I admire. I therefore accepted his invitation to be your speaker. The practice on this occasion has been, understandably, to talk about the Supreme Court, about some of the more interesting Justices, or about some of the Court's historic decisions. It occurs to me that a change of pace--perhaps I should say a change of general subject--may be appropriate.

I therefore will talk about a lawyer and an early Chancellor of Virginia. His name is George Wythe--sometimes mispronounced as "Weyth."

Governor Thomas Jefferson appointed Wythe Professor of Law at William and Mary in 1789. He thus occupied the first chair of law in this country. It was not until 1816 that Harvard created a chair for a law professor.

Wythe was a towering figure in our history, not in the sense of holding the highest offices, but because of his influence on those who did. Yet historians have paid scant attention to Wythe, and even his name is largely unknown beyond Virginia.

In the long reach of history, it is difficult for a lawyer or a professor to leave behind him an enduring reputation unless he has held high office or written extensively. Wythe did neither of these.

Yet Wythe was admired -- even revered -- in his time. Following Wythe's death, Jefferson spoke of his friend and tutor:

No man ever left behind him a character more venerated than George Wythe. His

*virtue was of the purest kind; his integrity inflexible and his justice exact; [He was a man] of warm patriotism, and devoted...to liberty and the natural and equal rights of men.... A more disinterested person never lived.*¹

Wythe was not merely a man of rare quality personally. He was a distinguished lawyer, judge and scholar. Although he neither sought nor held the highest offices, he was a conspicuous leader in Virginia.

His teaching career is perhaps best known. Few, if any, teachers in our history have taught such an exceptional group of students. In addition to Jefferson, there were John Marshall; Henry Clay; John Breckenridge, who became Jefferson's Attorney General; Judge Spencer Roane, famous for his opinion in *Kemper v. Hawkins*² that anticipated *Marbury v. Madison*; and he taught numerous other persons of prominence in and after the revolutionary era.

The best known of his pupils, of course, was Thomas Jefferson. Through his influence on Jefferson, one could say that Wythe was the godfather of the Declaration of Independence. We should resist the temptation to make too much of it, but the long and close association between Wythe and Jefferson suggests almost a father-son relationship.

Jefferson did not serve as an apprentice under Wythe. Rather, recognizing Jefferson's genius, Wythe outlined a course of study, and then allowed Jefferson to pursue his studies largely in his own way. This process no doubt contributed to both the depth and originality of Jefferson's highly discriminating mind.

Wythe encouraged the young Jefferson to probe the origins of Roman and Saxon law by reading the original Greek and Latin texts, rather than translations. Wythe also instructed Jefferson in history, ethics, science and literature, and encouraged him to read Italian and French. Compare this education with the "diploma mills" we have today.

The young Jefferson also was instructed in manners and hygiene. In sum, the tutelage under Wythe was the equivalent for Jefferson of the most demanding university education--indeed, far more demanding than what is called a university education today.

The questions often are asked: how did Wythe become such a wise and influential scholar of the law? Where--and by whom--was he taught? The fact is that Wythe, not unusual in the eighteenth century, was largely self-taught.

He was born in a small community--I believe near what is now Hampton, Virginia. He attended a neighborhood private school long enough, as he said, to learn "reading and writing English and the five first [tables] of Arithmetic."³ His mother, a gifted woman, was his primary teacher.

His self-education apparently never ceased. It was after receiving a license to practice law at the age of 20 that Wythe pursued his most serious studies. He is said to have exhausted the Greek and Roman classics without a guide or tutor. He studied thoroughly the origins of English law. To the dismay of opposing lawyers, he used his vast knowledge in the courtroom, supporting arguments with scholarly quotations.

Jefferson recalled one minor case--long since forgotten--in which Wythe fired a bewildering barrage of authorities at his adversary. He cited Virginia and British statutes, decisions of the British courts, sections of Justinian's Roman Code, and Cicero's Orations.

I hardly need add that comparable erudition is rarely heard even in arguments before the Supreme Court of the United States.

Wythe was no Patrick Henry urging revolution, but he did assume leadership when it became clear that British policy was inflexible and unjust. Though he was the last of the seven Virginians to sign the Declaration of Independence, Wythe wrote his name above the other six

signatures.

He signed his name fully as "George Wythe" rather than "G. Wythe," his customary signature. He wished to identify himself unmistakably as a revolutionary.

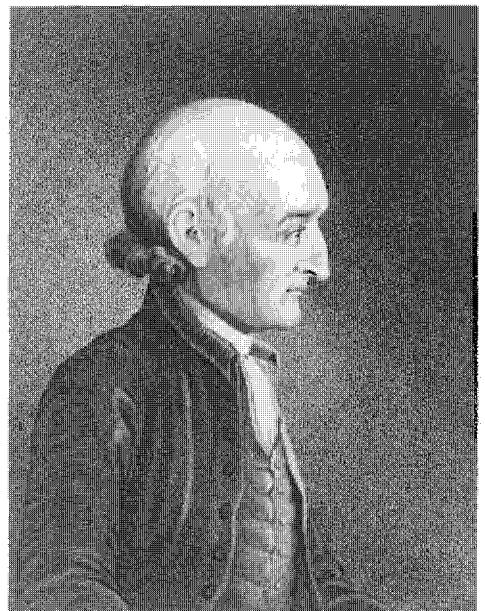
Wythe also sought to enlist in the cause. When Virginia militiamen appeared on a Williamsburg green near his residence, the 49-year-old lawyer put on a hunting shirt, took his musket, and sought to join the young men of the militia. He was gently, but firmly rejected.

But his ardor for the cause did not cool. It is reported that near the end of the Revolutionary war, Wythe and a couple of hunting companions opened fire with shotguns on a party of British soldiers in boats near Jamestown.

Happily, Wythe's place in history does not depend upon his military record. It was after independence had been won that he achieved leadership and prominence. He chaired the Committee of the Whole when the Virginia Convention adopted the Constitution. He was one of the leaders of that historic convention.

The College of William and Mary lost him in 1791 when he moved to Richmond to become the presiding judge of the High Court of Chancery. His service there merits more

George Wythe (1726-1806) occupied the chair of law at William and Mary, the first in an American college. His concept of the law greatly influenced Thomas Jefferson, John Marshall, James Monroe and Henry Clay.



careful study. At least one of his early decisions is noteworthy. He believed, as did other Virginia lawyers and judges, that the judiciary had authority to determine the law of the land. He made this clear in the case of *Commonwealth v. Caton*:

*If the whole legislature...should attempt to overleap the bounds, prescribed to them by the people, I, in administering the public justice of the country, will meet the united powers, at my seat in this tribunal; and, pointing to the constitution, will say, to them, here is the limit of your authority; and, hither, shall you go, but no further.*⁴

His decision in *Caton* was one of the first recorded judicial assertions of the supremacy of the Constitution, and was prophetic of things to come.

To the last hours of his life, this singular man--George Wythe--remained serene, wise and compassionate.

Wythe's death was tragic. In his old age he was a widower and lived with two of his former slaves, his housekeeper Lydia Broadnax

and a youth named Michael Brown. Wythe had educated Brown, and provided for him in his will. Wythe's 19-year-old grandnephew, George Wythe Sweeney, also had moved into the Wythe residence.

On a Sunday morning in 1806, in his eighty-first year, Wythe was poisoned by Sweeney. The grandnephew was the primary beneficiary under Wythe's will, and stood to inherit even more if the former slave Brown should die.

But Sweeney was unwilling to wait. He had forged Wythe's name on several checks. To hasten his inheritance, and perhaps to cover up his forgeries, Sweeney put arsenic in Wythe's coffee. Wythe drank the poisoned coffee while reading the newspaper. He lingered for two weeks, long enough to disinherit Sweeney. The servant, Michael Brown, and Wythe's faithful housekeeper, Lydia, also drank the coffee. She recovered, but Michael died.

It is ironic that the murderer of this great man who had devoted his life to the pursuit of justice was never punished. Sweeney was tried for the murders of Wythe and Brown and found not guilty by a jury. The results of an

Justice Powell (retired) delivered the Society's 1990 Annual Lecture on the topic of George Wythe, a fellow Virginian and influential lawyer, judge and scholar who had significant impact on legal education in the late eighteenth century.



autopsy were inconclusive. Moreover--as strange as it seems--under the law at that time Lydia Broadnax, the key witness, was a black person. She therefore was not permitted to testify against a white person.

Sweeney left Virginia in disgrace. Reportedly he came to a "bad end" in the west. One can hope this occurred.

I have presented only brief vignettes of the life of one of the most fascinating characters of American history. Perhaps I have said enough

to make clear why Wythe's stature and influence loom large two centuries after he became our country's first formal professor of law.

Endnotes

1. Oscar L. Shewmake, *The Honorable George Wythe*, College of William and Mary, 1921, pp. 19-20.
2. *Kemper v. Hawkins* 3 Va. (1 Va. Cas.) 20 (1793).
3. "Memoirs of the Late George Wythe, Esquire," I *The American Gleaner* No. 1, p.11 (Richmond, Jan. 24, 1807).
4. 8 Va. (4 Call.) 5, 8 (1792).