West African Journal

Lagos, Tuesday, Sept. 15. The airport is cramped and steamy. Crowds of people are milling, queuing, waiting interminably at the innumerable bureaucratic checkpoints — passport control, baggage pickup, customs, currency control, currency exchange. The Embassy provides “airport expediters” who hand you through; they are indispensable. They call the Vehicle by walkie-talkie, and it comes: a big Chevrolet van whose windows don’t open. Like many Embassy vehicles, it’s armored. In addition to their more obvious advantages, armored cars hold up better in collisions; notwithstanding a high infant mortality rate and rampant tropical diseases, traffic accidents are the leading cause of death in Nigeria.

How am I to talk about freedom in a country run by soldiers? Not to worry, they tell me; everyone here is for freedom. General Babangida has promised a return to civilian rule in 1992, and people think he means it. The burning question is why democracy did not work here the first two times it was tried.

This, I suppose, is where I come in. Day after tomorrow is the two-hundredth anniversary of the signing of our Constitution. I’m to talk about “The Role of the Supreme Court in Strengthening Individual Liberties.” It will do little good to describe the relevant provisions of the document itself; most of them are duplicated in the Nigerian Constitution that failed. Why does it work in the United States? I have a day and a half to figure that out.

Wednesday, Sept. 16. The Vehicle picked me up at 0900 hours, as it says in the itinerary, for “Briefings at USIS with ACGO/P, CAO, DPPO, and CPAO.” USIS is my sponsor, the United States Information Service. CAO is the Cultural Affairs Officer, PAO the Public Affairs Officer; “A” means Assistant, “D” Deputy. I myself am an AmPart—an American Participant, a professor brought in to talk to Nigerians about the United States.

Nigeria is larger than Texas and thought to have somewhere in the neighborhood of a hundred million people. Nobody knows exactly how many, because the last census was in 1963 and widely believed fraudulent; both representation (when there is any) and the allocation of federal oil revenues (which have slumped badly) depend on population.

There are three major tribal cultures in Nigeria: Hausa, Ibo, and Yoruba. Most numerous and most traditional are the Hausa, who live in the north and have practiced Islam ever since Arab traders first crossed the Sahara a thousand years ago. The
Hausa controlled the central government from independence in 1960 until General Ironsi's 1966 revolt. A coup prompted secession of the Ibo southeast (you remember Biafra) and a nasty civil war. General Gowon engineered a remarkable reconciliation, and Murtala Mohammed gave the federation a new Constitution. General Buhari overthrew the Shagari government after widespread charges of corruption and election fraud in 1984. Next week a Constitutional Review Committee meets to consider constitutional amendments; my visit is timely.

Thursday, Sept. 17. This was the big day. After going with Ambassador Lyman to help present a collection of books about the Constitution to Chief Justice Bello at the Supreme Court, I was taken to the Nigerian Institute of Advanced Legal Studies at the University of Lagos for my principal lecture. I began by emphasizing that the Bill of Rights was not the only part of the Constitution that protected individual liberty; structural principles like democracy, federalism, separation of powers, and checks and balances also served that important function. I invoked John Marshall's insight that constitutional limitations are worthless without judges to enforce them, gave a few examples of how the courts had actually defended our freedoms, and finished up—you guessed it—with Learned Hand's warning that even judicial review won't help unless liberty lives in the hearts of the people. This brought us back to Nigeria's question: How do you instill the necessary respect for the Constitution?

Friday, Sept. 18. There was only one event scheduled for today, a panel discussion at USIS on "Individual Rights vs. Community Rights." Many people in this part of the world, I was told, think we overemphasize the individual to the detriment of the community. Given ten minutes, I take twenty; so do the others. We favor the individual so much, I said, that we usually speak of community interests rather than community rights; we even had trouble with seat-belt laws. However, we've come a long way; even we tax the individual to keep his neighbor from starving. Nobody put up the anticipated fight; Nigeria is a pretty individualistic place.

Claudia took me to the museum. Claudia is the CAO, Claudia Anyaso. Claudia knows everything and everybody. We admired the ancient brass and terra cotta figures, bargained over thorn carvings in the craft shop, dined on suya and pounded yams. No, they're not like our sweet potatoes. They take a potato-like dough and make it into a snowball; you pull off pieces and dip them in your soup.

The Nigerian Council of Women's Societies was meeting in Lagos, and Claudia was to present them with a nicely bound copy of our Constitution. Would I like to go along? Yes indeed. Would I like to make the presentation? I sure would. My wife, I said, has been fighting for women's rights in the Illinois legislature. Things are getting better; the Equal Rights Amendment is just a matter of time. These women are part of the answer, aren't they?—organized, concerned citizens working for human rights.

Saturday, Sept. 19. "Free day," says the itinerary. I had breakfast with the Deputy Chief of Mission and went off with Claudia to see Lagos.

The Iraqi tanker sits in a field of water hyacinths that choke the harbor. The banana-shaped dugouts of the fisher-folk pass under the concrete expressway. Along the marshy shore are clusters of corrugated shacks—squatters from Benin and beyond, ethnic relations from beyond the border. The worst of it, says Claudia, is that for this they pay rent. The public housing structures across the bridge are unfinished; the coup caught them without their windows.

We stop in to see the King. Nigeria is a republic when the Constitution is in force, but it has traditional chiefs. Claudia knows the Oba of Lagos; Claudia knows everybody. The palace has seen better days; the Oba's position is ceremonial and his subsidy meager. There are stories of chiefs meddling in politics; their role in the next Republic is disputed.

A few blocks from the traditional Jankara Market is a shiny bank that would be at home in Chicago. Nearby, in a hundred year-old mansion with tile mosaics and iron grillwork, lives Claudia's friend Angelica, whose great-grandfather bought his freedom in Brazil and returned to settle on a tract of land granted by Queen Victoria. Soares and Da Concha are notable names in Nigeria; the Brazilians have maintained their identity and prospered.

Claudia's friend doesn't think she'll vote, prefers to work through organizations such as the Red Cross. The politicians have not created a sense of
confidence. Self-government requires practice, doesn't it? As Thurgood Marshall keeps reminding us, the Constitution we're celebrating permitted slavery. If you don't vote, the paper said, you can't complain. But civic service is part of the answer too, isn't it?

The monuments of fine Italian marble in the little cemetery remind me again of New Orleans. There are statues with black faces and white wigs, life stories inscribed on the base. James Churchwill Vaughan left South Carolina "because of the oppressive laws then in force against the colored man," became a successful businessman in Nigeria. His great-great granddaughter is educator, nurse, author, and feminist. Like her Brazilian cousin, she's kept track of relatives in the Western Hemisphere; Ebony did a spread ten years ago about Ayo and her cousin Jewel Lafontant (J.D. 1946), our Deputy Solicitor General.

Claudia's daughter Patricia, who is in the fifth grade, is running for Vice-President. What do Nigeria and the United States have in common, Madame Vice-President? A common language that makes it possible for you to speak to children who grew up half a world away from Baltimore. A common legacy of dissatisfaction, ladies and gentlemen, with a colonial system that systematically denied to those of us abroad those liberties so jealously guarded at home; your country, like mine, was created in order that the people could determine their own destiny.

"...statues with black faces and white wigs, life stories inscribed on the base."

My goodness, that was a hill, and downtown is downright rolling, with breathtaking views of the sea; it looks like the Caribbean. The best panorama is from the once and future luxury hotel atop the tallest rise, in sad disrepair since the government took over its operation. A stone's throw away is the ravaged shell of the once proud Masonic Temple, symbol of the True Whig aristocracy—the American-Liberian minority that dominated the country economically and politically until toppled in 1980 by Master Sergeant Samuel Kanyon Doe. It was pretty bloody here for a while. President Tolbert and a number of others were unceremoniously shot; the University was sacked and its entire faculty discharged. Many members of the thirty-three principal families fled to the States, taking with them much of the country's human as well as liquid capital.

The freed slaves settled here by the American Colonization Society in the 1820s numbered no more than 3,000, and their descendants were never more than 5 percent of the population. Nevertheless (Silver Lining Department) their involuntary apprenticeship coupled with outside support gave them certain advantages over the indigenous population. It seems generally agreed that there was more true corruption than true democracy under the True Whigs, but one doesn't hear much talk of improvement under their successors.

A new Constitution was promulgated in 1985, and there were elections. After promising not to run, Sergeant Doe changed his mind and won the count—not everyone is convinced he won the election. Our government's position was that the tallying process was "flawed" by the decision to appoint a "representative" commission to count the ballots in secret. True Whigs in the States pilloried the Reagan Administration for not going further; the issues are familiar to anyone who has followed the debate over sanctions against South Africa. The government generally supports us in the U.N. and thinks us ungrateful; being a superpower is not always fun.

As in Nigeria, there is a noisy private press. Papers have been banned and unbanned; the press provision of the Constitution contains a derogation clause susceptible of broad interpretation. The great flap of the moment grew out of a speech by opposition leader Baccus Matthews suggesting in what seemed conciliatory terms that any effort to unsettle the current regime would only delay the next democratic election. One of the newspapers chose to print this talk under the headline "Baccus warns of coup," and Congress was called into special session to ban both him and his party. The morning papers suggested the measure had been sent to the President for his signature. Later in the day several legislators were reported to have denied that any ban had been enacted, and the President left town without revealing what had become of his proposal.

In the evening Ambassador Bishop presented a set of lawbooks to the Supreme Court, the Bar Association, and the Law School. I said something about the Federalist Papers; I forget why. The Ambassador said what's important is that we think the process matters more than any particular result; I think he hit the nail on the head.
After spending the morning adapting the first half of my Nigerian speech on individual liberties and the courts for tonight’s lecture, I went to the imposing Capitol to speak with members of the House and Senate Judiciary Committees about the importance of an aggressive and independent legislature. Honorable Philip Deah, Chairman of the House committee, told us his daughter was studying at Chicago State and went off to round up his colleagues. Having heard that Supreme Court Justices were paid the princely sum of $630 a month, I thought this a good occasion to make a play for adequate judicial salaries as a means of attracting qualified personnel and reducing temptation. We have little influence in the legislature, they complained. Take your case to the people, I suggested, that they may judge. Never forget our Senate’s insistence on deliberating without President Washington, or Justice Jackson’s warning that legislators can preserve their prerogatives only by exercising them.

I had lunch with Baccus Matthews. He didn’t seem at all abashed. He did think it would be more convenient if people knew whether or not they had been banned. No friend of the True Whigs, he spoke matter-of-factly of the soldiers who used to roost out voters at gunpoint and ask them for whom they were voting. You hear conflicting stories about the True Whigs. Some contend that the People’s Redemption Council systematically deprived this struggling nation of the few individuals with the skills needed to keep it out of the Stone Age; others allude to rigged elections and dark doings in the basement of the Masonic Temple. Mr. Matthews was in prison when the coup fell, charged with instigating the riots that had brought the country to the brink of chaos. After serving as a minister, Mr. Matthews broke with the Doe government to form the United People’s Party, which had been banned and unbanned at least once before the present excitement. Unlike other opposition leaders, he has consistently preached cooperation with the existing regime; it is better to face reality, he believes, than to refight lost battles. There are those who suggest he went further in this direction than was absolutely necessary in accepting a shiny new automobile from the President.

Opposition, says Mr. Matthews, is a difficult concept in this country; the nearest equivalent of our word “opponent” in any African language is “enemy.” Not long ago the UPP sponsored a citizens’ meeting to discuss political and social issues. Such gatherings had been held in the past only as preludes to attempts to overthrow the government; the aim was to accustom the country to the exercise of the constitutional right of assembly. The UPP also threatened to seek a court order requiring the government to remove a notorious assortment of mentally ill individuals from the streets of Monrovia. The suit was never brought, its protagonists professing satisfaction with responsive though as yet fruitless efforts to remedy the problem; their main purpose had been to set a precedent for invoking the constitutional right to petition for redress of grievances. Mr. Matthews surmises that such incidents as these may have had something to do with the effort to ban the United People’s Party. He doubted he would challenge the ban if it was promulgated, but nobody expects Baccus Matthews to retire from public view.

Wednesday, Sept. 23. Next to the Capitol stands a shabby, discolored six-story concrete building reminiscent of those monuments to misguided housing policy that line the expressways in Chicago. This, I am sorry to say, is the Temple of Justice, seat of the Supreme Court of Liberia. We toiled up five flights of circular stairs; the elevators were not working. There were appreciable gaps in the faded green carpeting of the uncooled library, where ambitious collections of American statutes, decisions, and journals conspicuously tailed off after 1962. With proper pride Justice Robert Azango showed us the first volume of the Liberian
Reports, embracing decisions rendered by his tribunal between 1861 and 1907. The latest edition of the Liberian Code on the shelves dates from some time in the '60s; Justice Azango assured us he had his own copies of subsequent legislation. The decrees of the late military government are not easy to find; they have never been systematically collected, and apparently some were never published. Many of those decrees, not surprisingly, are believed to be inconsistent with the new Constitution, which like its 1847 predecessor (drafted by Professor Simon Greenleaf of Harvard) is in most important respects reminiscent of our own. Some argue that these decrees became void automatically when the Constitution came into force, but the government refuses to say so; there is a suspicion it wishes to retains the daunting possibility of threatening to invoke them against those who oppose its course.

The courts too have been a subject of controversy. Not long ago President Doe requested the resignations of all members of the Supreme Court and got them. The normally tractable Senate initially voted down by secret ballot more than one of his subsequent nominees, including an attorney called Chea Cheapoo. Thereupon the President decided to substitute Mr. Cheapoo for his original nominee for Chief Justice, who had already been confirmed. (Was that legal?, I was asked this evening. Time to get out that ten-foot pole. I'm not an expert on your Constitution; you might get some food for thought out of Marbury v. Madison ...). This time, though the Senators were required to stand up and be counted, the vote was equally divided; the Vice-President's casting vote was needed to put him over the hump. (Is the Vice-President's legislative role consistent with the separation of powers? Get out that pole again.) Chief Justice Cheapoo promptly raised a ruckus by touring the country to dismiss allegedly incompetent or corrupt judges, which some contend he had no power to do. He was out of town today, and no one seemed to know anything about our appointment. Further efforts turned up a judge who offered to get the troops together at eleven; the speech had been scheduled for ten.

Judicial review by independent judges, I tell them, is essential to the enforcement of constitutional freedoms in a democracy. What can the courts do, they ask, to promote respect for their decisions? Get their own house in order, avoid any appearance of impropriety, explain decisions in terms that convince the loser he's had a fair hearing. What can a judge do in the face of a recalcitrant government with superior physical power? Think of Chief Justice Taney, who lost the battle but won the war by calling on the President to support the orders of the courts; think of the Nigerian judges who, unwilling to pull down the temple by invalidating a decree limiting their jurisdiction, construed it as narrowly as possible.

Having spoken to legislators and judges about their roles in making the Constitution work, I was now to talk to the Fulbright alumni about the responsibility of the citizen. What does a law professor know about that? Well, I do know something about that, and maybe we're finally getting down to fundamentals. In a nation of sheep, Baccus Matthews had said, there will always be a shepherd. It was ordinary citizens who tossed that tea into Boston Harbor (was that too inflammatory?), who argued so forcefully in the Federalist Papers for the new Constitution, who voted in popular conventions for its adoption. It was ordinary citizens who joined together to educate, plead, lobby, and litigate with such success in organizations like the ACLU, the NAACP, and the Sierra Club. I tell them about Project Leap, which helped to sanitize elections in that developing country we call Chicago, about the dramatic effects of citizen pressure for environmental protection in the 1970s, about the mechanics of running, checking, and passing in a grass-roots campaign for the Illinois General Assembly. Don't expect Nirvana tomorrow; enforcing our Fifteenth Amendment took a hundred years. You say it was easy for us, our people could do all this without fear? Think of Medgar Evers and Martin
Luther King. Remember the power of the word: I have a dream....

My grandfather and my uncle were Presbyterian preachers. I think they would have been pleased.

Thursday, Sept. 24. After an unexpected television appearance in which I said what you would expect, I lunched with Deputy Justice Minister Eugene Cooper, who proved to be well versed in such subtleties as the distinctions among aidsers, abetters, and accessories and the British law of extradition. The Minister was much exercised over our insistence on signing a formal lease for the use of a government building to house a new library that we are to help underwrite. You have the President's personal assurance, he complained, and you don't trust him. You know those sticklers in our financial office, said his host; their rules require something in writing. You know why you never have military coups? asked the Minister. Your troops are not concentrated around Washington.

I had two hours before tackling "The Constitution as a Political Instrument" for a general audience at USIS. The title had been foisted on me in June in connection with an appearance in Germany; the people in Monrovia thought they were making it easy for me. In Bonn I had taken the liberty of changing the subject. Tonight I described the Constitution as the result of a political process, the framework that channels our political energies, an instrument of orderly political change. I closed with the Vietnam Memorial as a symbol of the point Ambassador Bishop had made on my first evening, our emphasis on what unites rather than divides us. You know the Memorial: no editorializing, just thousands of names, our common tragedy. I was pleased to spot a large UPP button in the front row; it's not easy to intimidate expression.

Friday, Sept. 25. This morning I spoke at the police academy, taking as my text "We serve and protect," the motto of the Chicago police. Never forget you hold your awesome power as trustees for the people; if you abuse it you will be asharded. The senior officers sat neatly in dark trousers and white dress shirts; there is no money to buy the cadets uniforms. The Commandant gave me an earful about the decision of our Congress not to provide financial support for foreign police; I told the Ambassador that sounded ham-handed and promised to speak to my Senator. There seems to be a general expectation that Uncle Sam will do things for you, and indeed there is need for our help; this is not a rich country.

My last engagement was lunch at a seaside hotel with Dan Brown, who does the news for the government TV. Other invitees not having materialized, I pocketed my predictable remarks about the responsibility of the press in a democracy and listened to tales of reporters finding smoldering ballots in the back country after the last election. Mr. Brown was properly proud of the press's role in bringing down ex-Foreign Minister Blamo in the recent procurement scandal and properly irate over efforts by the director of the state electric company to suppress an embarrassing story about malfunctioning traffic lights. Money is short in broadcasting too; Mr. Brown is his own editor, producer, and general man Friday.

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I was treated to an appropriate tropical deluge as Amos picked me up for the trek back to the airport; pedestrians were wading up to their knees. We passed the corrugated shacks, the piles of refuse in the streets, the women with prodigious loads on their heads, the Rooster Restaurant proclaiming its "sudden service," the John F. Kennedy Hospital where you bring your own bandages, the headquarters of the West African Contracting Organization, whose acronym is wryly pronounced "wacko." In the light it looks rather like Florida, flat and palmy, till we turn away from the coast. The mountains appear in the distance; in a few hours I'll be back in Chicago.

This morning the Speaker of the House said Congress had never voted to ban Baccus Matthews or his party. I thought this sounded encouraging; maybe the President had decided to back off in view of the storm raised by his proposal. Dan Brown wasn't so sure. It's sobering to visit countries like Nigeria and Liberia; it makes you think about things we tend to take for granted. But I saw the light in the eyes of the lawyers, the students, the concerned citizens; I sensed a broad commitment to the values I had come to preach. How, they kept asking, can we make it work? I quoted Learned Hand on the spirit of liberty and Bloody Mary on the importance of dreams. I exhorted to education, to grass-roots organization, to legislative and judicial courage. I toasted the future of the rule of law in the Republic of Liberia.

Nigerian ceremonial dancers