



NEWSLETTER

In the first newsletter of the year it is customary to start off with a reminder to all our 2009 members to renew. This can now be done at the website (www.constructionhistorysociety.org), where you will find a renewal application and a Paypal connection to pay the dues. The rates are being held at 2009 levels with no increase. So please sign up again if you have not already done so.

A special welcome goes to our new members who have joined recently – thank you. We are a young Society and our finances are fragile, so every new member is very welcome.

The big news of the last quarter was the successful event which CHSA organized in partnership with the National Building Museum in Washington, DC at the beginning of December. The program focused on a review of Construction History from the viewpoint of several federal agencies, professional and trade associations and societies active in the field. This issue includes a full report on the program and the conclusions reached. A particularly satisfying outcome was the acceptance given to CHSA and our mission.

Also in December we held a telephonic Annual General Meeting of the Society as required in our by-laws. Two new members were elected to the Management Committee – Lee Gray and Mohammad Gharipour, both of the University of North Carolina. I will be sending around minutes of the meeting and a chairman’s report for 2009, before the end of the month.

You should by now have been sent another copy of the Call for Papers for our upcoming conference at the University of Pennsylvania. Abstracts are due by the end of January. Information on registration and accommodations will be posted soon, but save the dates: May 20-22.

The 2009 Construction History Journal should be in the mail shortly to all 2009 members. Remember if you do not renew your membership you will not receive the 2010 issue which we are assured by our British colleagues will be published on schedule this time!

With best wishes to all for a happy, healthy and successful 2010.

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Fisher Fine Arts Library, University of Pennsylvania

THANKS TO OUR INSTITUTIONAL AND CORPORATE MEMBERS

- * Associated General Contractors of America
- * Auburn University
- * Canadian Centre for Architecture
- * Construction Management Association of America
- * Georgia Institute of Technology
- * Levine Construction Company
- * Old Structures Engineering
- * Skanska USA Building, Inc.
- * Texas A&M University
- * Turner Construction Company
- * The Whiting Turner Contracting Company
- * Vertical Access LLC

AN OUTLINE OF THE HISTORY AND POLICY BEHIND ARCHITECTURAL COPYRIGHTS

To every cow, her calf. This seemingly self-evident maxim describes an elemental principle of American copyright law: that authors control the reproduction and distribution of their creative work. Though this grant of copyright to authors actually predates the American revolution, authors have not always controlled who could copy and distribute their work.

Control of the right to copy is rooted in seventeenth century British law, at a time when communications technology (the printing press) was changing the world. Then, as now, control of information brought enormous political and commercial power. Then, as now, technological development often outpaced evolution in the law. And then, as now, the law served as a tool for achieving societal and commercial balance. A government that controls what people read has an advantage in determining what they think – and even how they pray. The benefits of this alignment were not lost on a post-reformation British government, which sought to heighten religious influence and economic gain by granting and controlling a monopoly on rights in copies (i.e., copyrights) – not to authors – but to printers, including the governmental printer. But monopolies must still market a “product.” And a monopoly (even one as strong as the government and the press) that deprives authors of the fruit of their creativity cannot thrive. The stifling effect of the English printers’ monopoly on creativity became evident by the late 1600’s. Parliament’s response, in 1710, was to enact the Statute of Anne, which granted to authors the right to control copying of their work, and shifted commercial advantage away from printers.

The value of that shift must have been obvious to the framers of the American Constitution. They included a provision stating that “The Congress shall have Power... To promote the Progress of Science and the useful Arts, by securing for limited Times for Authors and Inventors the exclusive Right to their respective Writings and Discoveries[.]” U.S. Const. Art. I, § 8, cl. 8. Thus, like the English statute, the U.S. Constitution (and copyright legislation that has since followed) grants authors the right to exclude others from copying and distributing their works. The same constitutional clause gave Congress power to establish patent protection of inventions. The distinction between patent and copyright played an important role in the development of now-recognized architectural copyrights (i.e., copyrights in architectural and engineering drawings and building designs).

The protection of exclusive rights to use novel and functional objects and devices, methods of operation, and other useful inventions is commonly the subject of patents – not copyrights. In contrast, copyrights generally protect original “expression” that is fixed

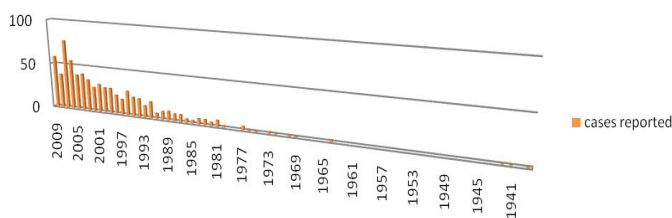
in a tangible medium where that expression is artistic, arbitrary, creative, or aesthetic (i.e., predominantly non-functional). Both patent and copyright law attempt to balance the benefit to society of sharing the product of creative or inventive effort with the adequacy of the reward realized by the creator or inventor. The balance struck by both the Patent and Copyright Acts typically allows an author or inventor (for a limited time) to enjoy exclusive rights to control copying and distribution of their work or invention (and, hence, profit exclusively from it), while assuring that society at large will: (a) be aware of precisely what has been invented, created, or achieved; and (b) eventually obtain full use of it. Patent and copyright laws differ, however, in that patent law recognizes that society has a time-sensitive, if not urgent, interest in the functional utility enjoyed in new inventions (such as new drugs or medical devices) – at least when compared to equivalently original “purely creative” expression (such as movies, paintings, or novels). Therefore, patents are generally more difficult to obtain and of shorter duration than copyrights. But aren’t buildings both creative and useful? Aren’t architectural drawings useful in constructing buildings that are functional and beautiful? Isn’t the act of even mere technical drawing both useful and creative in nature?

During most of our history, questions like these have cast doubt on whether architectural plans can, as a matter of law, be protected by copyright. As late as the 1970’s, courts still struggled with those issues – even though it was, by then, settled law that copyright protection did not extend to individual building elements depicted within the plans. Ultimately, judicial consensus favored copyright protection of architectural drawings. Buildings, however, were a different story. Before 1990, one could freely copy a building (however creative, notable, or unique its design) as long as the copier did not copy the drawings of the building in order to build it. With passage of the Architectural Works Copyright Protection Act of 1990, Congress extended copyright protection to buildings and building designs (but, again, not to their individual standard features, such as windows, doors, etc.).

While the scope of architectural copyright protection has clearly expanded, the technology of architectural design and drawing can be fairly said to have exploded. Developing technology has changed the creative process, as well as the way that design information is assembled, shared, and used. On a given project, several architects, engineers, or other “authors” can contribute to development of a single “set” of construction documents (electronic or paper). But tracking and isolating each contributor’s work becomes more difficult as their contributions are electronically folded into consolidated computer drawing files or digital building models. Once again, the law has not fully kept pace with advances in tech-

nology. Authors still control copyrights. Unless they have taken steps to divest themselves, contributors to electronic drawing and building model files presumably still own the copyrights in their respective contributions. And most standard form industry contracts, and the Copyright Act, itself, continue to default to ownership of copyright by the original author. Given that the Copyright Act provides broad remedies for infringement, including court-ordered cessation of construction of a building built using infringing drawings or designs, it is essential that the entire building team be aware of the source (i.e., copyright ownership) of protectable design and drawings incorporated in any project.

The combination of the expansion of scope of architectural copyright protection with this explosion of design technology has compounded the effect on the marketplace – and in the courts. One measure of that impact is the number of reported judicial decisions involving copyright infringement and architects or engineers. During our first 200 years as a nation, fewer than a handful of reported court decisions (total) even tangentially addressed building-related copyrights. But by the late 1990's, that number had increased to well more than a dozen cases per year. In the first ten months of 2009, at least 50 cases have been reported that relate at some level to architectural copyrights¹. Of course, reported cases only represent a fraction of the disputes that begin the litigation process. [Although the number of reported cases of all types increased over the same period, that increase alone does not account for the unmistakable trend demonstrated by the increased litigation involving architectural copyrights (summarized in the graph below).]



¹ The author expressly disclaims empirical precision in this survey. The numbers reflect a generally objective search for reported federal court decisions on copyright that likely impact building industry participants to one degree or another. Not all of decisions listed involve architects or engineers as named parties. On the other hand, not every case that involved copyright and architects or engineers sufficiently bore on the issue of copyright to be included in the databases and electronic search that resulted in this integrated listing. Subjective judgment was necessarily applied.

And nothing suggests that this trend will reverse itself – especially during the acceleration of computer design technology. Thus, the history of architectural copyrights provides a useful guide to those who seek to explore what advancing technology offers to the building industry. In doing so, designers and builders must remain conscious of the law's enduring protection of the rights of authors, while constantly weighing those rights against the compelling benefits of full use of computer design technology.



David Roberts is principal member of Roberts Construction Law, LLC, in Atlanta, Georgia. He concentrates his practice in construction law and architectural copyrights. He practiced architecture for seventeen years before beginning his legal career. Contact him at davidroberts@constructiondocument.com.

UPCOMING MEETINGS OF INTEREST 2010

Society of Architectural Historians, Chicago, IL 63rd Annual Meeting, April 21-25, 2010 (www.sah.org)

CHSA, University of Pennsylvania, Philadelphia, PA Second Biennial Meeting, May 20-22, 2010 (www.constructionhistorysociety.org)

Society for Industrial Archeologists, Colorado Springs, CO Annual Meeting. June 3-6, 2010 (www.sia-web.org)

ASCE History and Heritage Committee, ASCE Annual Conference, October 20-22, 2010, Las Vegas, NV (creese@asce.org)

Association for Preservation Technology International, Denver, CO Annual Conference, October 6-9, 2010 (www.apti.org)

CONSTRUCTION HISTORY – AN EXPLORATION

On December 2nd 2009 a symposium on this subject was convened at the National Building Museum in Washington, DC and delivered to a peak audience of 60. It was organized by CHSA in partnership with the Museum. Assistance was received from the Whiting Turner Contracting Company, who celebrated their centennial in 2009, and also from the Associated General Contractors of America.

The **objectives** of this event were:

1. To establish why the study and research of the history of all aspects of American design and construction is important,
2. To compare notes on our current activities and commitments of the representative entities in the field,
3. To explore opportunities for future collaboration on the subject,
4. To identify initiatives that can be taken to expand awareness of the value of construction history throughout the industry and with the public.

The format involved three distinct panels with a total of 21 speakers and moderators.

Full details of the program and speakers can be found at the CHSA website (Events page).

Introduction

In opening remarks titled “The Industry that Time Forgot”, Brian Bowen, Chair of CHSA, suggested that the key reason that so little attention was paid to the history of the American construction industry at large was its fragmentation into many parts with no single body to speak for it. Thus its comprehensive history was largely ignored by the media, academia and the industry itself. CHSA was formed to encourage a unified examination of construction history in the broadest sense.

Summary Panel 1: Federal Agencies (GSA, NPS, Corps of Engineers, Architect of the Capitol, Smithsonian)

All were impressed by the scope of the GSA (www.gsa.gov) and NPS (www.nps.gov) activities in the field of preservation and in particular the extensive documentation completed and underway, all of which is open to the public. In addition to technical records (drawings and specifications), NPS also archives other documentation, such as contracts. Of particular interest is a growing register of construction material and equipment suppliers.

The US Army Corps of Engineers traces its history back to 1794. Its Office of History is charged with recording and preserving this history and collecting artifacts and memorabilia. In addition to military history, the scope includes the extensive Corps activities in the civil works arena. Far more information is available at their website – www.usace.army.mil/history

The Architect of the Capitol (www.aoc.gov) is responsible for far more real estate than just the Capitol building itself and for far more than design and building. An operations and restoration work force totals more than 1,500. Extensive study and research materials on the Capitol area facilities are available for access.

The Smithsonian (www.si.edu) maintains excellent records of its own facilities and has various construction documents and artifacts in the collection of the Division of Work and Industry.

Summary Panel 2: Professional and Trade Associations (AIA, ASCE, ACEC, AGC, CMAA, University of Maryland)

The AIA’s Historic Resources Committee (www.aia.org/practicing/groups/kc) was formed in 1890 and is the oldest standing committee; it has over 5,000 registered members. The focus understandably is on the identification, protection, preservation and reuse of the country’s architectural heritage. This is done through broad education initiatives, an awards program and conferences. The History and Heritage Committee of the ASCE (www.asce

org/history/index) was established in 1964, with the mission of conducting programs to increase understanding of the professions contribution to the development of society. It implements landmarks and awards programs and arranges symposia with one on the Hoover Dam planned for October 2010, the 75th anniversary. ACEC (www.acec.org) has no specific history mission, but incorporates lessons from history in such current activities as its proposals for a new definition of performance based design.

AGC of America (www.agc.org) will be celebrating its 100th anniversary in 2018 and this has awakened a new level of interest in the historic contributions made by its members.

CMAA (www.cmaanet.org) was formed in 1982 and has focused its history activities largely on examining and documenting the growth of construction management since the 1960's.

Finally, Grace Palladino, author of *Skilled Hands, Strong Spirits*, spoke of the little known and little appreciated history of the building trade unions and how this should be regarded as an essential part of Construction History.

Summary Panel 3: Design and Construction History Societies (SAH, CHSA, PWHS, NBM, APT/DC, SIA)

SAH (www.sah.org) was formed in 1940 and is primarily home to architectural historians, many of whom are academics. It is well supported and offers the full array services enjoyed by a well-established professional society with 3,500 members – conferences, peer-reviewed publications, etc. The Society has not shown a great deal of interest in expanding its horizons to include construction or engineering history and a collaboration with CHSA was suggested.

CHSA (www.constructionhistorysociety.org), only two years old, is growing and establishing itself as a home for those interested in both broad and narrow subjects of construction history. It has an affiliation agreement with the British-based CHS.

PWHS (www.apwa.net/about/sig/pwhs) established in 1975, is a branch of APWA, and is focused naturally on public works history. It produces books, essays and oral histories of luminaries in the field and has a joint annual conference with APWA.

The National Building Museum (www.nbm.org) was started in 1985 and, beyond being a custodian of the magnificent Pension Building, fields multiple programs dealing with innovation, sustainability, youth education and careers, plus mounting exhibitions relating to design and construction. Its archives are steadily growing in importance.

APT/DC (www.aptdc.org) is a branch of the main association. It concentrates on all aspects of preservation and conservation of the built environment. It numbers a diverse range of members from the public sector, practitioners and academics.

SIA (www.sia-web.org) was begun in 1971 and its interests focus on virtually any feature of our industrial, technological and engineering heritage, including of course the buildings and facilities. There is an annual conference, tours, visits and publications. The Society is nurtured by Michigan Technological University.

Afternoon Speakers

Professors Richard Burt and Linda Ruth of the School of Building Sciences, Auburn University (www.auburn.edu/bcsi) and members of CHSA, gave an invigorating presentation on Construction History in Academia, decrying the lack of attention to the subject in most curricula and making an excellent case as to why this omission should be corrected. To do so they drew on their own courses and research in the field at Auburn to illustrate the value CH can bring into the curriculum and the wide-open opportunities it presents for research. Linda's course led to the development of a potential CH text book using selected buildings from each key period of history to illustrate the evolution of design and of the construction process. Richard summarized his own research dealing with WW II 'conflict' sites in Normandy and London and emphasized the level of interest (and hence funding) that these have attracted.



Exterior of National Building Museum

Conclusions

- There was a great deal of information shared over a short period and some general conclusions can be drawn from the presentations and the discussion that followed.

- There is an amazing quantity and variety of activities being undertaken in the field on many different aspects of construction history, most of which tend to concentrate on 'objects' as distinct from 'process'.
- The exchange of information and the identification of multiple sources of research materials were extremely valuable.
- There was general acceptance of CHSA and of construction history as a new discipline; calls were made for closer collaboration in the future between the societies and associations represented.
- The moves being made with ASC and ASCE to introduce construction history into construction and engineering curricula were noted and supported.
- Opportunities for research and scholarship clearly abound and would be improved with better access for publication.
- Some concerns were expressed that Construction History was not well understood. As a new field its definition will slowly emerge.
- Recommendations were made to encourage more research into and record-keeping of , the workers active in the industry, including a better understanding of the role of the unions, employer-worker relations, oral histories of key players, etc.



Interior of National Building Museum

Acronym Key:

ACEC	American Council of Engineering Companies
AGC	Associated General Contractors of America
AIA	American Institute of Architects
AOC	Architect of the Capitol
APT/DC	Association for Preservation Technology, D.C. Chapter
APWA	American Public Works Association
ASC	American Schools of Construction
ASCE	American Society of Civil Engineers
CHSA	Construction History Society of America
CMAA	Construction Management Association of America
GSA	General Services Administration
NBM	National Building Museum
NPS	National Park Service
PWHS	Public Works Historical Society
SAH	Society of Architectural Historians
SIA	Society for Industrial Archeology
USACE	United States Army Corps of Engineers

ANNOUNCEMENTS

Public Works Historical Society

We have been asked by PWHS to appeal for article submittals for their newsletter. If you have a subject in mind, contact Teresa Hon (thon@awpa.net) and she can give some guidance.

History of Scaffolding

We have had an enquiry from Sean Lyons in Boston on whether anyone can shed any light on this subject for an article he is writing. If you have any leads or references for him, please send to spatrcklyons@gmail.com

SOME BOOKS TO CONSIDER (THE DESCRIPTIONS ARE TAKEN FROM AMAZON.COM)**“Shasta Dam: A History of Construction, 1938-1945”**

by Al M. Rocca, published by CreateSpace (Paperback - 2009)

Shasta Dam is the second largest dam in America and this book covers the construction during the years, 1938-1945. Using official photographs taken by the Bureau of Reclamation during construction, readers will learn about the engineering challenges that needed to be overcome and of the personal stories of some of the thousands of men and women who built the dam.

“Inuvik A History, 1958-2008: The Planning, Construction and Growth of an Arctic Community”

by *Dick Hill*, published by Trafford Publishing (Paperback - 2008).

A History and a companion volume to “Inuvik In Pictures”, is published to coincide with the 50th anniversary of the official naming of Inuvik in 1958. This book is the most complete account available of the planning, construction and growth of Canada’s first planned arctic community. The story begins in the early 1950s when the decision was made to build a new town on the Mackenzie Delta, as the centre of regional government and a base for resource development.

“Footbridges: Construction, Design, History”

by *Ursula Baus, Mike Schlaich, and Wilfried Dechau* published by irkhäuser Basel (Hardcover - 2007)

The influence on the interplay of technical progress, imagination and functional variety in footbridges are different from those affecting large-scale bridges. This fact has resulted in an exhaustible variety of distinctive design, as is beautifully illustrated by the selection of footbridges shown in this book. Essays clearly explain the technical aspects and the aesthetic potential of different structure designs.

Footbridges contains detailed presentations of 90 European bridges, with text, comprehensive and detail plans, and photographs taken especially for the volume. With projects by Arup, Jürg Conzett, Foster and Partners, Happold, Schlaich Bergermann and Partners, Wilkinson Eyre, Jiri Strasky and others. The examples are organized chronologically in thematically focused chapters: lightweight bridges, moving bridges, covered bridges, taut-ribbon suspension bridges, arch bridges, etc.

“Drafting Culture, a Social History of Architectural Graphic Standards”

by *George Barnett Johnston*, MIT Press, (Hardcover - 2008)

The book traces the role and status of the architectural draftsman from the late 19th century and the evolution of Architectural Graphic Standards first published in 1932 as the definitive technical reference for architects. Draftsmen were once the base of the profession and their functions and social hierarchies are well addressed here.

“The Canal Builders, Making America’s Empire at the Panama Canal”

by *Julie Green*, The Penguin Press, 2009

Less concerned with the engineering feats, this book addresses the human dimension of the project – the people who actually built it, all 60,000 of them between 1904 and 1914.

CONSTRUCTION HISTORY
JOURNAL OF THE CONSTRUCTION HISTORY SOCIETY

Again, this is an appeal for submittal of papers on American topics to this Journal.
See notes for contributors at: www.constructionhistory.co.uk

WHO WE ARE

The Society is dedicated to the study of the history and evolution of all aspects of the built environment—its creation, maintenance and management. It is a forum for scholars and professionals in the field to share, meet and exchange ideas and research.

Membership is open to a wide range of construction related disciplines involved in the planning, development, design and construction of buildings and engineering infrastructure, in addition to those concerned with their operation and preservation.

Members share a passion for examining how our existing structures were planned, designed and built, with the purpose of using this knowledge to better preserve what we have and to guide us in determining future directions.

The US branch of the Construction History Society is a distinct entity catering to the historical studies and interests of its members here in America. Membership in the US branch includes full benefits in CHS at large, including receipt of the Society's Journal and newsletter and links to scholars in the field worldwide.

MANAGEMENT COMMITTEE

Brian Bowen (Chairman), GA Tech, Atlanta, GA

Anat Geva (Vice Chairman), Texas A&M University, College Station, TX

Tom Leslie (Secretary), Iowa State University, Ames, IA

Mohammad Gharipour, University of North Carolina, Charlotte, NC

Lee Gray, University of North Carolina, Charlotte, NC

Jeff Beard, ACEC, Washington, DC

Don Friedman, Old Structures Engineering, New York, NY

Frank Matero, University of Pennsylvania, Philadelphia, PA

John Ochsendorf, MIT, Cambridge, MA

Michael Ramage, Cambridge University, Cambridge, UK

Linda Ruth, Auburn University, Auburn, AL

CORRESPONDING SOCIETIES

Public Works Historical Society, www.pwhs.net

Historical Construction Equipment Association,
www.hcea.net

THIS IS YOUR NEWSLETTER AND THE ONLY VEHICLE WE HAVE TO KEEP IN TOUCH WITH ONE ANOTHER.

SO PLEASE USE THIS TO LET US KNOW:

- * your interests in construction history, your current research, précis of recent lectures, etc.
- * books, texts & articles that your fellow readers should know about
- * names and e-addresses of colleagues and friends that we can include on our mailing list
- * if you are willing to write a brief article for us.

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