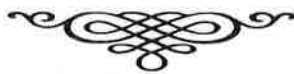


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THE HISTORICAL SOCIETY OF THE UNITED STATES DISTRICT COURT



FOR THE DISTRICT OF NEW JERSEY

Vol. IV No. 2

Spring 2002

LETTER FROM THE PRESIDENT



Two recent historical Society events and two scheduled events are evidence that we are both preserving and celebrating the proud history that our Beloved Judge Gerry urged us to do as temporary custodians.

In March, our First Annual Gala was a huge success. The capacity audience enjoyed the magnificent documentary film Jim Waldron produced depicting some history about the courthouse in Newark. We also dedicated the Whipple Lounge, heard Professor Lender's

discussion about the Court's early work, which is excerpted in this newsletter, and applauded the long-awaited return of the cornerstone eagle to be permanently placed at the front of the Martin Luther King, Jr. Courthouse.

In May, thanks to Judge Wizmur and Carl Poplar, we memorialized one of the Court's most widely publicized trials, a 1973 trial known as the Camden 28. The defendants were a group of anti-Vietnam war protestors who, through jury nullification, were acquitted after they broke into a draft board's office to destroy files. A huge audience watched while professional film makers recorded many of the defendants, prosecutors and law enforcement personnel for an entire day in the courtroom in Camden. We will soon have that oral and visual history as part of a permanent exhibition.

On October 24 in Camden, there will be a program we will be co-sponsoring with the Supreme Court's Historical Society and the Societies of the Third Circuit and the Eastern District of Pennsylvania. The afternoon will focus on "The Constitution in Crisis," with an excerpt from the Camden 28 film, a preview of the soon-to-be published history of our Court, and a speaker the Supreme Court will be selecting.

Our second scheduled event will be in March when we celebrate our Gala in Newark. We welcome ideas from the Bench and Bar for program topics.

We continue to receive kudos for the highly-acclaimed permanent exhibit in the Trenton Courthouse that Judges Thompson and Hughes and Mary Gaskill created. Soon, Camden and Newark will complete their exhibits through the devoted work of Judge Wizmur and Chief Judge Gambardella.

So, your Society is alive and well as we reach beyond ourselves in the service of the Court.

— Donald A. Robinson, President

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THE TREATMENT OF UNPOPULAR DEFENDANTS IN THE UNITED STATES DISTRICT COURT: THE FIRST CHALLENGE

[The] history of how we have looked at and handled unpopular defendants correctly implie[s] that an unpopular defendant, innocent of guilt, in effect, is a test or a trial of the legal system, itself. . . . How quickly or how long did it take the District of New Jersey, which opened for business in 1789, to come up against a case that took a defendant, or a group of defendants, who were clearly obnoxious to the powerful or to the people generally, put them on trial, and then test itself in this difficult and problematic situation? It didn't take long.

The District of New Jersey was only two years old, when in April of 1791, a Federal Grand Jury sitting in the Circuit Court for the District of New Jersey indicted one Amasa Parker and five other co-defendants for..., in the indictment's language, "feloniously" — is there any other way? — "counterfeiting the public securities of the United States of America."

Parker faced two indictments and they were serious. Counterfeiting could be a capital offense in the 1790s. But the indictments were even more noteworthy because Parker and the others were not ordinary counterfeiters. In fact, they were part of a notorious gang called The Crane Ring, whose operations had made them obnoxious to federal and state officials over New England and all of the middle...states.

Their hideout was supposedly a carefully guarded and hidden cave somewhere on the Hudson River that was never discovered, but they were good enough forgers to pass the securities of several states and the federal government with virtual impunity for the first years of the Washington administration.

In 1790, law enforcement officials in New York City arrested or held for questioning Francis Crane, the ringleader, and a number of others but had released them for lack of evidence. Nevertheless, federal and state officials kept an eye on The Crane Ring wherever and however they could.

In early 1791, Crane's luck seemingly ran out. Amasa Parker, one of Crane's lieutenants, the individual...indicted in Trenton, and several of his associates were recognized in New Jersey, picked up at the order of the District Attorney for New Jersey, and arrested.

Then, even better, there was a confession. A Dr. Clarkson Freeman, another of Crane's lieutenants already in jail in Newark for counterfeiting New Jersey securities, confessed completely and implied that he was willing to testify against Parker and the others.

Between the capture of Crane in New York and the arrest of Parker, Freeman and the others in New Jersey, the doom of the gang seemed all but assured. The arrests constituted the culmination of the largest single criminal investigation in the young history of the Office of U.S. Attorney for the District of New Jersey.

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The matter hadn't been easy. Crane and his confederates were desperate men and had violently fought arrest. Now, significantly, these defendants were also highly unpopular among a cadre of very powerful people. The forgeries of The Crane Ring, as noted, were extensive, which put them high on the list of public enemies of no one less than Alexander Hamilton, the nation's first Secretary of the Treasury.



Alexander Hamilton

The young Republic was struggling to establish its credit and establish a stable currency, and Hamilton had identified The Crane Ring as a major threat to the national economy. In fact, Secretary Hamilton, who had virtually staked his political reputation on the success of the Republic's financial system, was furious at the ability of The Crane Ring to elude prosecution. Consequently, he had taken the rather extraordinary step of securing a special federal appropriation to track them down.

Now that they were in custody and under indictment; however, the federal District of New Jersey faced its first trial in which the defendants were truly obnoxious. It was also the first trial in which the federal government had a direct interest in the outcome of the case. No one doubted that Hamilton and the Washington administration generally wanted The Crane Ring out of business – and out of business permanently.

Under the circumstances the independence and fairness of the new federal courts, which had never been tested in the district, were as much on trial as Amasa Parker.

Now, despite the successful roundup of Parker and the other Crane gang confederates, Abraham Ogden, the U.S. District Attorney for the District of New Jersey, knew that winning a trial was by no means certain. In fact, he considered success problematic. That hidden cave in which the gang printed its currencies had never been found. There were very few witnesses and just as little physical evidence to bring into court.

So, in what had to have been one of the first actions taken by any U.S. Attorney – it was certainly the first time it was tried in the District of New Jersey – Ogden broached the possibility of a plea bargain for Clarkson Freeman, the man already in jail and who already had confessed. He would trade a pardon for Freeman if Freeman agreed to testify against the others.

Ogden wrote to no less than Chief Justice John Jay informing him that a conviction without Freeman's testimony was going to be chancy, and what did he think of this idea of trading the pardon for testimony?

Jay liked the idea but didn't want to do something like this without checking with his boss, whom he considered no one less than President George Washington. He referred the matter directly to the President. The President pondered it. While the pondering went on, however, the trial came up without any agreement having been established with Clarkson Freeman.

Worse for Ogden, he was going to face very able defense counsel. In what was another first for the District of New Jersey, the Court took the step of ordering what, in effect, was a public defender to handle the case on behalf of Amasa Parker. And the Court didn't just pick any attorneys. They picked individuals with first-rate reputations: Aaron G. Woodruff and Mr. Richard Stockton. The choices were significant.

If the Justices were trying to assure the appearance, at least, of fair play, they succeeded admirably. Woodruff was a highly regarded New Jersey attorney and Richard Stockton was in a class by himself. By common consent of the New Jersey Bar this was the best attorney in the state of New Jersey. The son of a signer of the Declaration of Independence, he was the

first U.S. District Attorney for the District of New Jersey. He had served briefly under Judge David Brearley. This was a man whose contemporaries considered virtually without peer at the Bar.

The minutes of the Court are silent on the reasons for his selection. But the fact that he took the defense gave the case an even higher public profile. The trial took place in Circuit Court on the 12th of April in 1791, with the Court sitting in a tavern in the city of Trenton ([there] not being a federal courthouse yet). At the time, taverns were public forums as much as courthouses.

Associate Justice James Iredall and District Judge Robert Morris heard the case. Ogden chose to try Parker on one count of the two indictments. If it was a test of the strength of the case to see how it would go before he tried the other count or the other defendants, he was disappointed. The government called eight witnesses including Clarkson Freeman, but Freeman did not have his plea bargain, and whatever he and other witnesses had to say – it wasn't enough to make Ogden's case. The jury went out. They came back after only half an hour. And they announced that, "The prisoner at the Bar is not guilty of all of the charges whereof he stands indicted, and so say we all."

At this the government's case unraveled. Parker himself went back to the Somerset County Jail where he was going to be tried on state charges. Among the other defendants, there were some state convictions on minor indictments, but the federal charges went no further in the District of New Jersey.

There was one bizarre aftermath of the story. Clarkson Freeman had been returned to jail in Newark where he was going to serve out his New Jersey sentence. He was not happy sitting in jail in Newark. So he broke [out of] jail and fled to Canada.

The government remained furious with him, and no less than Secretary of State Thomas Jefferson contacted Judge Morris in New Jersey to figure out what they might be able to do about all of this. Inasmuch as Freeman was in Canada, there wasn't a great deal. But Ogden remained persistent. The results of the trial and the collapse of his case must have rankled him.



Timothy Pickering

So, as late as 1795, four years later, he still wanted to reopen the affair. He contacted the new Secretary of State, Timothy Pickering. Once again, he offered to trade a pardon for testimony. Pickering could only ask for extradition from Canada. When the Canadians tried to find him, they couldn't. At this [point], Freeman and his confederates simply disappeared from the historical record.

... [T]he matter was noteworthy, nevertheless. The Parker case really was an early test of justice in the District of New Jersey. The government was clearly concerned with the matter. Some of the most powerful people in the Washington administration took a direct interest and had communicated with the Court about this case.

Ogden did all he could to mount a vigorous prosecution, and yet the courts paid strict attention to the proper forums of legal proceedings at virtually every point. There were no short cuts at trial and, certainly, there was a concern that Parker and the others receive a proper defense. The "not guilty" verdict would indicate a jury acting on the evidence; not on the notoriety of the defendants or the well-known desire to put The Crane Ring out of business.

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❖ Scenes from the First Annual Gala ❖



U.S. Magistrate Judge Ronald Hedges, Don Robinson, Esquire, and Chief Judge John Bissell listening as John Whipple, Esquire participates in the dedication of the attorneys' lounge.



Chief Judge Bissell congratulating Michael Chagares, A.U.S.F., as the plaque memorializing the "Return of the Eagle" is unveiled.



Chief Judge Bissell, seriously considering the weight of history.



Magistrate Judges Stanley Chester and John Hughes celebrating the success of the Gala with Susan Travis, Clerk's Office Liaison to the Historical Society.



Professor Lender addressing the capacity audience regarding the historic - yet timely - question of the defense of unpopular defendants.



U.S. Bankruptcy Judge Kathryn Ferguson and Chief Bankruptcy Judge Rosemary Gambardello enjoying the reception.

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It is fair to say that Judge Morris and Justice Iredall would have very much liked a guilty verdict in *United States v. Parker*. But they did not allow their court to sacrifice due process in pursuit of such an outcome. If the verdict was a disappointment, perhaps there was some understanding, even at the time, that the Court had made the larger and more important point. Federal justice in the early Republic could be even-handed even in the face of a high-profile case involving undeniably unpopular defendants.

In the early years of the Republic, when the federal courts [were] still something of a novelty for much of the Republic, it was important that such a precedent be on the record.

— Mark Edward Lender
Nathan Weiss College of Graduate Studies,
Kean University

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SOCIETY PLANS FUTURE PROJECTS

After its highly successful "Gala" event on March 4, the Society is not sitting on its laurels. A further program is scheduled for October 24, 2002, in conjunction with the United States Supreme Court Historical Society, and a further annual program is now in the planning stages for 2003. Those plans will be discussed at our June 13 Board of Directors Meeting.

The October 24 program will feature the joint program concerning the "Camden 28" Trial. That taping of the reunion of trial participants, which took place on May 4, is planned to be part of the permanent Historical Society exhibit for the Mitchell H. Cohen Courthouse in Camden, which is being prepared by a subcommittee chaired by Bankruptcy Judge Judith H.

Wizmur. The actual plans for the exhibit remain highly confidential, but there are rumors about an interactive "touch screen" computer display.

Beneath the surface, the Society members also are working diligently. The written history of the Court being prepared by Dean Mark Lender continues to grow (in chapters). The Newark historical exhibit subcommittee chaired by Bankruptcy Chief Judge Rosemary Gambardella is continuing its planning, including expansion of the exhibit in the atrium of the Martin Luther King, Jr. Courthouse and exhibits at other locations in the two Newark Courthouses. Not to be forgotten, the Society is collecting oral histories from current and former members of the Court, and we hope to be able to share the results of some of those recollections in the Newsletter.

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Editors: Kathryn R. Renahan/Robert E. Barkus
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HISTORICAL SOCIETY OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

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