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## Inside this Issue:

<b>Tribute to New Jersey's Law Schools</b>	<b>1</b>
<b>The Alabama's Bell Tolled</b>	<b>4</b>
<b>Fisher Award Winner</b>	<b>7</b>
<b>Honoring Barbara Morris</b>	<b>8</b>

## Historical Society's Tribute To New Jersey's Law Schools

By: Keith J. Miller, Esq.

On April 18, 2013, the Historical Society conducted a Tribute at the New Jersey Law Center recognizing and honoring the history and traditions of New Jersey's three law schools - Rutgers School of Law - Newark, Rutgers School of Law - Camden, and Seton Hall Law School. The Tribute, which was co-sponsored by the New Jersey State Bar Association, featured audiovisual presentations on behalf of all three law schools followed by a networking cocktail reception. The Tribute was well-attended by the Historical Society's members and Judicial Advisors, by faculty, students and alumni from the law schools, and by members of the judiciary and legal community.

The Tribute began with welcoming remarks from Historical Society President Leda Dunn Wettre, followed by introductory remarks from Tribute Chair Keith J. Miller. The keynote speech was given by Chief United States District Court Judge Jerome Simandle, who praised the contributions that all three law schools have made to the legal community in general and to the District of New Jersey in particular. Chief Judge Simandle noted that all three law schools have worked closely with the District Court for many years to facilitate the administration of justice, including participating in numerous programs and providing judicial interns and law clerks for the Judges of the District. Chief Judge Simandle also noted that many of the Judges of the District are graduates of the State's three law schools, as are many other members of the Federal Court Family.

Dean Ronald K. Chen provided remarks on behalf of Rutgers School of Law - Newark. Included in Dean Chen's presentation was a surprise video greeting from Supreme Court Justice Ruth Bader Ginsburg, who was a member of the Rutgers School of Law - Newark faculty from 1963 until 1972. Justice Ginsburg recalled how much she enjoyed her years teaching at Rutgers, and complimented the District of New Jersey for its excellent reputation within the Federal Court system. Dean Chen also introduced a video presentation highlighting the law school's history and current activities.

Dean Rayman Solomon gave a presentation on behalf of Rutgers School of Law - Camden. Included in Dean Solomon's presentation were his comments about the pending merger between Rutgers School of Law -



Newark and Rutgers School of Law - Camden. Dean Solomon also introduced a video showcasing the law school's history and accomplishments.

Associate Dean Claudette St. Romain gave a presentation on behalf of Seton Hall Law School. While she narrated the law school's history and accomplishments, a PowerPoint presentation played in the background, including many historical photographs of the law school. A reflection on her experience as a Seton Hall Law School student was also given by third year student Lauren Respoli, who is about to begin a clerkship in the District of New Jersey for the Honorable Kevin McNulty.

After the presentations were completed, the Historical Society hosted a networking cocktail reception at the Law Center that allowed the law students and recent graduates to network with the Judges and other distinguished members of the legal community who attended the Tribute. The attendees enjoyed sumptuous hor d'oeuvres and engaged in many lively discussions.

The Historical Society would like to thank the committee members who helped to make the Tribute such a rousing success, including Judicial Advisors Honorable Tonianne J. Bongiovanni, Honorable Douglas E. Arpert, Honorable Mark Falk, Honorable Patti Shwartz and Honorable Esther Salas, as well as Board Members Joe Tripodi, P.J. Murphy, Raj Parikh, Marion Percell, and Jennifer Critchley. Special thanks also go out to Susan Travis, Jim Waldron and Jack O'Brien of the Court for their invaluable assistance in preparing for the Tribute.







Continued on page 12.

## **For Whom A Bell Tolled**

**By: Jennifer C. Critchley, Esq. and Patrick J. Murphy, III, Esq.**

The Confederate States Steamer *Alabama* was the most elegant and decisively efficacious vessel deployed by either the Union or the Confederacy during the American Civil War. Whereas the far more famous Civil War iron-clads USS *Monitor* and CSS *Virginia* were ugly, unseaworthy, flawed experiments, the *Alabama* represented a beautiful marriage between the best qualities of sail, and the infant technology of naval steam propulsion. The *Alabama*, which was built in England for the Confederate States of America under a tenuous veil of secrecy, was designed for one purpose -- to hunt, capture, burn (preferable) or bond (if necessary) Union merchant ships. She was, therefore, a thoroughbred commerce-raider. To that predatory end, the *Alabama* was designed for speed, with dimensions that optimized her ability to course through the sea under sail alone. She was revolutionary, however, by virtue of her two state-of-the-art, coal-driven steam-engines, which could both conquer the capricious doldrums of the open ocean, and power the *Alabama's* invaluable fresh-water condensers. As a warship, the *Alabama* was formidable, armed primarily with two long-range, large-caliber naval cannon capable of intimidating any Union merchant vessel into submission, or if necessary, destroying them. Thus, reliant only upon periodic resupplies of coal, the *Alabama* was elegantly designed to cruise the world's oceans in virtually any conditions, searching for Union prey.

On the morning of August, 24, 1862, in the eastern Atlantic a few miles off the Azorean Island of Terceira, the *Alabama* began her cruise towards historic immortality when her Captain, Raphael Semmes -- a veteran former Union Navy officer and attorney from Mobile, Alabama -- read aloud the *Alabama's* commission from Confederate President Jefferson Davis. The *Alabama's* band played "Dixie," the British colors were hauled down, and those of the fledgling Confederate States of America were raised to the masthead. As the helmsman took his first turn at the ship's great wheel, he no doubt observed the *Alabama's* fitting motto, engraved on a brass plate affixed to the wheel: "Aide-toi et Dieu t'aidera" or "God helps those who help themselves." Just as certainly, as the *Alabama* stoked her boilers, spread her canvas, and got underway as a commissioned warship for the first time, every member of the crew heard the sharp toll of a brass object that formed the *Alabama's* veritable heartbeat -- the ship's bell.

Indeed, the *Alabama's* crew lived their lives for the next 20 months by the tolling of that bell. Across tens-of-thousands of sea-miles and most of the world's oceans, as the *Alabama's* bell tolled, the crew awakened, sailed, slept, and ate. As the *Alabama's* bell tolled, she hunted, pursued, and captured or burned 65 Union merchant ships. As the *Alabama's* bell tolled, Union merchants and ship owners scrambled to cope with the spike in maritime insurance rates caused by the *Alabama*, and frantically sought to transfer the registration of their vessels off-shore, so they might not fall prey to the infamous commerce-raider. As the *Alabama's* bell tolled, the public, press, and politicians in the North angrily ranted against the Union Navy's embarrassing inability to capture or kill Captain Semmes and his rapacious vessel. As the *Alabama's* bell tolled, frustrated bureaucrats in Washington were forced to divert valuable Union warships from the war-long blockade of Southern ports to participate in a worldwide hunt for the *Alabama*. As the *Alabama's* bell tolled, she fulfilled her mission of ravaging Union merchant shipping, and incredibly, did so without the loss of a single life.

The *Alabama's* bell, however, was not destined to toll forever. In June, 1864, desperately in need of maintenance following almost two-years of cruising around the globe, the *Alabama* made port in neutral Cherbourg, France. Shortly thereafter, the USS *Kearsarge*, a powerful Union warship commanded by Captain John A. Winslow, arrived outside the French port. The *Kearsarge's* sudden appearance presented Captain Semmes with two unpalatable options: spend the remainder of the war blockaded in Cherbourg or subject his tired vessel to a battle in which the *Alabama's* elegant design would provide no advantage. Displaying the same aggressiveness that had already forged the commerce-raider's legacy, Captain Semmes informed Captain



Winslow that the *Alabama* would give battle. On June 19, 1864, Captain Semmes, the *Alabama*, and its crew sailed towards their fateful rendezvous with the *Kearsarge*. Surely, as they did so, the *Alabama*'s bell tolled.

The result of the battle was not inevitable. In its early stages, a well-placed shot from the *Alabama* lodged in the stern-post of the *Kearsarge*, above the ship's rudder. Had that shot exploded, as it was designed to do, the *Kearsarge* would likely have been rendered unable to steer. In that condition, Captain Semmes would have had the option to either methodically pummel the *Kearsarge* from various advantageous angles of attack or sail away from Cherbourg without fear of immediate hostile pursuit. The shot, however, did not explode, and the *Kearsarge* was not seriously damaged. Instead, over the course of an hour-long battle, the *Kearsarge* displayed superior gunnery, and therewith inflicted a series of fatal wounds upon the *Alabama*. Ruined by Union ordnance, the fate of the once-elegant warship quickly became inevitable. As a sign of surrender, the Confederate colors that had so recently menaced hundreds of ships all over the world were struck down, and the *Alabama*, with its bell, sank into the gray-green Atlantic.

Nearly three-quarters of a century later, as one story goes, a British Diver named William Lawson from the Isle of Guernsey claimed to have retrieved the *Alabama*'s bell. Over the course of the 20<sup>th</sup> Century, the bell went from Lawson to a pub and then to an antiques dealer. In 1979, Richard Steinmetz purchased the bell from the antiques dealer and brought it back to his home in New Jersey. Steinmetz put the bell up for auction in 1990 in New York City. When the Naval Historical Society learned of the auction, the United States filed a complaint against Steinmetz in admiralty in the District of New Jersey demanding that Steinmetz deliver the bell to the United States. The case was assigned to the Honorable Dickinson R. Debevoise, U.S.D.J.

To decide the case, Judge Debevoise was tasked with wrangling through more-than-century-old-historical facts, complicated maritime and constitutional law relating to the succession of property from the Confederacy to the United States after the Civil War. All of this information was presented to and considered by the District Court before it ultimately ruled on what boiled down to a basic issue: "I found it. It's mine." vs. "You found it. Now give it back."

In legal parlance, the issue presented was whether the bell from the *Alabama* was property of the United States by right of succession or by right of capture. The Court heard arguments on a motion to show cause why Steinmetz should not deliver the bell to the United States and considered briefs submitted in support of competing summary judgment motions. Ultimately, the District Court granted the United States' motion, and found that the *Alabama* had been captured by the *Kearsarge* and therefore the sunken vessel, complete with its bell, became United States property.



On appeal, the Third Circuit considered not only the submissions of the parties, but also those of *Amici Curie*. One brief that supported Steinmetz's position was presented by a group that included the American Sport Divers Association, the Federation of Metal Detector & Archeological Clubs and the Alliance for Maritime Heritage. The National Trust for Historic Preservation in the United States, the Society

of Historical Archaeology, the Advisory Council on Underwater Archaeology, the Society for American Archaeology and Council of American Maritime Museums argued that “recognition of the United States ownership of Confederate property ... will ensure that the United States maintains the right and ability to protect and preserve historic artifacts and archaeological artifacts... which would otherwise be subject to damage or loss through inappropriate retrieval and disposition.”



The Third Circuit issued its opinion on August 21, 1992. Judge Sloviter’s first line aptly sums up this legal saga: “The circumstances out of which this appeal arises are more suited to an epic poem than a legal opinion.” The colorful opinion weaves in fascinating details of the bell’s travels. One stop was a local pub in the Isle of Guernsey, to which Lawson sold the bell for “drinking privileges.” The Third Circuit passed on the issue of whether the *Alabama* was captured by the *Kearsarge*. An analysis of this issue would have required a determination of whether the *Kearsarge* constructively possessed the *Alabama* as it never actually had actual control over the ship’s movements. Rather than deciding the viability of this doctrine, the Third Circuit adopted the United States’ succession argument. In so concluding, the Court held that the crew of the *Alabama* were not pirates and thus the ship was never privately owned. It also considered international law treatises, jurisprudence from English Courts and Supreme Court Opinions from the 1870’s to interpret a “not well-defined” legal doctrine of state succession and its applicability to the passage of ownership of Confederate property after the Civil War. Following the reasoning it could decipher from this body of law, the Third Circuit concluded that “as a matter of law, the United States acquired title to the *Alabama* after the Civil War ended.”

While affirming the United States’ ownership rights, the Third Circuit echoed the District Court’s sentiment that Steinmetz should have been compensated for his “considerable energy and creativity in retrieving and returning to the United States and irreplaceable artifact from its history.” The District Court noted that “one would think ... that in the unusual circumstances of this case some way could have been devised to make Mr. Steinmetz whole. But that, apparently was more than the bureaucratic mind could accomplish.”

As it opened, Judge Sloviter’s Opinion closes with flair by commenting that after 128 years, the *Alabama*’s bell “tolls for the United States.”

The rub, as the subsequent decade would prove, is the bell that had been “docked” in Judge Debevoise’s courtroom had apparently never tolled for the Confederate States of America aboard the *Alabama* during the Civil War. On August 27, 1992, while reporting on the Third Circuit’s decision in *Steinmetz*, the Bergen Record published a story that presented an alternate history for the bell at issue in the case. Instead of the epic odyssey presented to the Court by Steinmetz (and apparently not seriously contested by the United States), the Record cited a then-recent interview with an English fisherman named Peter

Trickett, who claimed that a friend had drilled the name “Alabama” into a plain brass bell which was then used as a prop for a home movie. Trickett further claimed that the bell was subsequently sold to a local antiques dealer as a “joke.” The Record also cited a senior historian at the Naval Historical Center in Washington who harbored doubts about the bell’s authenticity because of its size and condition. Despite the claims of Mr. Trickett and the doubts of scholars, the Record noted that Steinmetz, not surprisingly, “maintains that the bell is genuine. And he won’t give up his mission to make the Navy pay for it.”

The question of the bell’s authenticity appears to have been finally resolved almost ten years after the Third Circuit’s decision in *Steinmetz* was issued. In July 2002, a team of French and American archeologists, operating in conjunction with their respective navies, recovered the bell of the *Alabama* from the ship’s wreck on the sea-bed off Cherbourg. The bell was recovered with its ornate mounting-bracket which, 140 years before, had likely been secured to the foremast of what would become the *Alabama* by an English shipwright. Thanks in part to the decisions of Judge Debevoise and the Third Circuit in *U.S. v. Steinmetz*, the U.S. Navy’s ownership of *that* bell, and all other artifacts recovered from the wreck, is indisputable. Notably, the bell purchased by Steinmetz still tolls for the United States at the U.S. Navy Museum in Washington, D.C., under a display that asks “Is It Real?” According to a highly-placed source within the museum, the correct answer to that question is “no.”

Today, almost a century-and-a-half after she sank beneath the Atlantic, history doubts the righteousness of the *Alabama*’s mission. There is no doubt, however, that the *Alabama* was an extraordinary vessel, and that her place in the pantheon of immortal warships is secure. Part of her extraordinary history sailed through the District of New Jersey, and in the wake was left an important, colorful, and lasting contribution to federal law.

### **Fisher Award Contest Winner!**

The winning entry of the Historical Society’s 2012 Fisher Award Contest was submitted by Peng Wu, Jacqueline D. de Armas and Joanna E. Geneve, law clerks to the Honorable William H. Walls, Sr. U.S.D.J. The entry was a video production about the landmark patent infringement trial in *Goodyear v. Day*, the first of many cases alleging infringement of Goodyear’s patent on vulcanized rubber. The case was tried in Trenton, and was notable not only for its subject matter, but also in that it was the last case tried by famed statesman and lawyer Daniel Webster, who represented Goodyear. The video combined historical scenes of New Jersey and readings of excerpts from the trial, voiced by Judge Walls himself. Congratulations to the winners on their creative entry!

## Honoring Barbara Ann Morris, New Jersey's First Female Federal Prosecutor

By: Sandra L. Moser, Esq.

Fairly or otherwise, New Jerseyans have been, in recent years, represented in large numbers on television series, both “real” and fictional. For those versed in one such show, *Boardwalk Empire* – the HBO series depicting the corrupt alliances and political machinery that dominated Atlantic City and the surrounding area during the height of Prohibition era – the name Esther Randolph is a familiar one. The female character is memorable if for no other reason than for her employ, in 1920, as a young Assistant U.S. Attorney who sets up shop in New Jersey to combat rampant bootlegging and election rigging.

Randolph's federal prosecutor is based on the real-life Mabel Walker Willebrandt, or “The First Lady of Law,” who took office as the nation's second female Assistant Attorney General and highest ranking government official in 1921. Although Willebrandt indeed was a tireless enforcer of the Volstead Act during her tenure with the Department of Justice, in truth, her most well-known successes were not in New Jersey, but in the South – toppling massive bootlegging rings in Mobile, Alabama and Savannah, Georgia, and in the Midwest – securing the downfall of George Remus, “The King of the Bootleggers.”

If not Willebrandt, this left me thinking, what of the actual presence of female federal prosecutors in the District of New Jersey in the early Twentieth Century? It is well established that the District of New Jersey was one of the original 13 courts established by the Judiciary Act of 1789; and, in December of the same year, Richard Stockton was commissioned as the first U.S. Attorney for the District of New Jersey at the tender age of 25. But it would take another 205 – yes, 205! – years for that post to be filled by a woman, the Honorable Faith S. Hochberg, the first (and only) woman to serve as the District's top prosecutor, from 1994 to 1999. So, just who were the “Esther Randolphs” who occupied the space in between? Who were some of those to pave the way for we women who now make up more than one third of the Assistants in New Jersey's U.S. Attorney's Office, the fifth largest office in the nation?

Before taking up the mantle of criminal prosecution, of course women had to gain the more basic threshold right to engage in the practice of law in the District. As a result of the lobbying of local suffragists, in 1895, the New Jersey legislature passed a law opening the profession to women. Mary Philbrook, having been denied admission based on her gender the previous year, was the first to be admitted following the ratification of the new law. In 1906, Philbrook again blazed the trail by becoming the first woman from New Jersey to be admitted to practice before the Supreme Court of the United States.

Another 50 years would pass before a woman joined the ranks of the U.S. Attorney's Office in New Jersey. As reported in the *New York Times* under the headline “Woman In U.S. Law Post: Named Assistant Attorney in Historic Move in New Jersey,” on March 6, 1956, Barbara Ann Morris of Montclair was sworn in as an AUSA. As reported, Morris thereby became “the first woman in New Jersey history to hold the post.” That day occupied a place in history for a second reason – Morris is African American. One of only two women in the class of 1953 at Rutgers University Law School, Morris distinguished herself





academically and in the pursuit of equal justice, having been the only woman to serve the school's Legal Aid Society. Based on her "superior scholarship," according to the New York Times, U.S. Attorney Raymond Del Tufo, Jr. – who would leave the office not long after for medical reasons – recommended Morris's appointment to then Attorney General Herbert Brownell.

Assigned to the Civil Division in Newark, Morris spent roughly five years serving as an AUSA. During that time, her cases included attempts to recover money on behalf of the United States in "Totten Trust" matters (don't feel bad, I had to look it up too); tax actions; bankruptcy litigation; and defending the Air Force at trial in a Federal Tort Claims Act suit brought after a car accident on Route 1. Several cases that Morris litigated are memorialized in written opinions available on Westlaw.

In 1961, Morris left the U.S. Attorney's Office and joined the ranks of the National Association for the Advancement of Colored People ("NAACP"), where she served as assistant counsel to Chief Counsel Robert L. Carter, who succeeded Thurgood Marshall in the role. Carter's Administrative Papers for the period 1956 to 1965, cataloged in the Library of Congress, reflect the scope of duties of Carter's office during this extraordinary time. In addition to defending the NAACP and its local officers on the front lines throughout the South from prosecution, the chief counsel also consulted with state and national officials about the content of proposed civil rights legislation. Among the boxes of Carter's historic papers are folders containing both correspondence and memoranda of Morris herself.

Morris communicated with Carter and others regarding issue after landmark issue: Constitutional protection of peaceful picketing (in February, 1964, Morris was the one to argue for lifting the ban on picketing for civil rights that had been imposed by a federal court in Jackson, Mississippi in June of 1963); racial discrimination complaints against New York City Port Authority and the U.S. armed forces; complaints regarding the denial of veteran's benefits to African Americans; and Title VII litigation on behalf of St. Louis to San Francisco Trainmen, to name just a few. Also included in Morris's papers was correspondence concerning a proposal for the establishment of "a defender system for the indigent" in New Jersey. And, indeed, it was the Criminal Justice Act of 1964, 18 U.S.C. § 3006A, passed during Morris's tenure with the NAACP, that provided for representation of defendants financially unable to pay and which led to the creation of The Office of the Federal Public Defender for the District of New Jersey in 1973.

Morris spent more than a decade at the NAACP coordinating fights against meaningless

WOMAN IN U.S. LAW POST: Named Assistant Attorney in Historic Move in Jersey  
Special to The New York Times.  
New York Times (1923-Current file): Mar 4, 1956:  
ProQuest Historical Newspapers: The New York Times (1851-2009)  
pp. 71

## WOMAN IN U. S. LAW POST

### Named Assistant Attorney in Historic Move in Jersey

Special to The New York Times.

NEWARK, March 3—A young woman whose "superior scholarship" in law school came to the attention of Government officials will be sworn in here Tuesday as an assistant United States attorney.

Announcement of the appointment of Miss Barbara Ann Morris, 49 Madison Avenue, Montclair, was made today by United States Attorney Raymond Del Tufo Jr. He said she is the first woman in New Jersey history to hold the post.

Miss Morris, who is a Negro, majored in biology at Fisk University, Nashville, Tenn., where she was graduated in 1949. She studied law at Rutgers University. She received her degree in 1953 and was then admitted to the bar. Miss Morris has been associated with Van Y. Clinton in a general law practice in Newark. She will be assigned to the civil division of the United States Attorney's office here.

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desegregation tactics in places like Jefferson County, Arkansas, and attacking “de facto segregation in northern schools,” including many here in New Jersey. Morris participated in litigation concerning school segregation in towns from Plainfield (*Booker v. Board of Education*), to Englewood (*Spruill v. Board of Education*), to Bridgeton (*Byers v. Board of Education*), to Orange (*Fisher v. Board of Education*). By 1977, Morris had transitioned to a new role, as Director for the National Employment Law Project, where she continued her pursuit of social justice through the courts.

The Report of The United States Attorney for the District of New Jersey, published in February of 1979, reflected an increase from Morris’s day in the number of women serving as AUSAs. During the calendar year 1978, of the 83 assistants serving the District under U.S. Attorney J. Robert Del Tufo – brother to Raymond Del Tufo, Jr., who had hired Morris twenty odd years prior – 12 were women, or about 14 percent. In a recent discussion, Robert Del Tufo shared his pride over learning of his brother’s selection of Morris to serve as the first female, and first female African American, AUSA in New Jersey. Of his own hiring practices during a time of change in the office during the late 1970s, Robert Del Tufo expressed confidence in his selection of women among a sea of resumes, telling me, “The women I hired were all very highly qualified.”

Among the women listed in the above-referenced 1978 report was Susan Volkert who, in the early 1970s as a new attorney with the DOJ Honors Program in Washington, D.C., was selected to participate in the first ever “advocacy group,” an intensive trial training program. There, Volkert overheard a group of male prosecutors from New Jersey discussing their cases, namely involving political corruption, and thought to herself, ‘I want to be a part of that.’ She said as much to one of the men, John Barry, and his response was simple: “So, try!” And so Volkert did. She joined the Camden office in 1975. Of her status as one of a sprinkling of women at the time, Volkert said, “I never thought about it. I was surrounded by men in law school, as well. The only thing on my mind was do the best job you can to make a meaningful contribution.”

Volkert ultimately returned to DOJ in D.C., went on to serve as Deputy General Counsel for a major corporation, and is now a firm partner here in New Jersey. Considering the spectrum of her varied legal career, Volkert acknowledged that there were times where culture and atmosphere did, in fact, heighten her cognizance of being a woman in the profession. The takeaway for her is an endorsement of diversity and inclusiveness; no matter what the mission, she shared “to have the same thing over and over is to have the same result.” Volkert added, “The way people think is where real diversity lies, and gender is a part of that.”

The names Katharine Sweeney and Maryanne T. Desmond – presently more often referred to throughout the U.S. Attorney’s Office as Honorable Katharine S. Hayden, Senior United States District Judge, and Honorable Maryanne Trump Barry, Senior Judge for the United States Court of Appeals for the Third Circuit – also

WOMAN GETS U.S. POST: Negro Sworn as Assistant Attorney in Jersey  
Special to The New York Times  
New York Times (1973-Current file); Mar 7, 1956.  
ProQuest Historical Newspapers: The New York Times (1851-2009)  
pg. 29

## WOMAN GETS U. S. POST

### Negro Sworn as Assistant Attorney in Jersey

Special to The New York Times.  
**NEWARK, March 6—**Miss Barbara Ann Morris of Montclair, N. J., was sworn today by Federal Judge William F. Smith as the first woman assistant United States Attorney in New Jersey.

Raymond Del Tufo Jr., who heads the local office, said he had recommended Miss Morris' appointment to Attorney General Herbert Brownell because of her scholastic standing at Rutgers University Law School. The Negro woman was graduated in 1953. Mr. Del Tufo said she would be assigned to the trial of civil cases.

were among the 12 to appear in the 1978 Report. Both judges have roots in the U.S. Attorney's Office, Judge Barry having been the first woman to do criminal work on behalf of the office, the first to run the Appeals Division, and the first to join the ranks of the "front office," before President Reagan nominated her to the U.S. District Court in 1993.

Speaking to me recently, Judge Barry recounted the serendipitous nature of her application to the U.S. Attorney's Office. Having returned to law school in New York more than a decade into her role as full-time mother to her son and nearing graduation, Judge Barry saw a simple posting on the school's bulletin board. Applicants were sought, said the notice, to fill a single slot at the U.S. Attorney's Office in Newark. Of what can only be fairly characterized in hindsight as a significant day in the commencement of her extraordinary legal career, she said, "I still remember what I wore to the interview."

Joining the Civil Division, and soon thereafter, the Appeals Division, Judge Barry said that she felt fear in those early days – not because she was one of only a handful of women, but because she had joined the office straight out of law school, absent other full-time legal experience. Nonetheless, she recalled, she also found a way to project confidence, which served her well. Indeed, Judge Barry walked that line throughout her career at the U.S. Attorney's Office – consistently maintaining a healthy sense of professional fear (Would a "left field" question from outside the appellate record be thrown her way in the midst of an oral argument, for example, and would she be able to adequately respond?), but equally exuding an assurance that no one had worked as hard, or knew the case as well, as did she.

Aside from hard work, Judge Barry counts having men as friends in the workplace and simply getting along with people as keys to success for her, and for other women. "Law is people relations," she explained, not simply what is memorialized on the record. Notwithstanding this practical viewpoint, Judge Barry certainly does not deny that she felt her femaleness as an AUSA. Of the plain reality of having often been the only woman in a meeting or in court, Judge Barry said, "I was very aware of being noticed, being watched." And by that, she explained, she does not simply refer to having been seen as an anomaly by the men in those meetings, in those courtrooms – hers was a more introspective take. "I knew other women would follow and felt a responsibility to them to do the best I could. I was very aware that what I did could make it harder for those who would follow or could make it easier."

Bridging the gap between our "Esther Randolphins," like Morris, Volkert and Barry, and the dozens of women walking the halls of the District's field offices today, is Assistant U.S. Attorney Lorraine Gerson. At 84, Gerson is still prosecuting financial fraud after more than 30 years in the office – she is the oldest federal prosecutor in the nation, female or otherwise – and she is one of the few who truly is specially qualified to remark on the changing landscape for woman in the U.S. Attorney's Office. Having arrived at the USAO in 1979, Gerson told me, "It's been wonderful to see the increase in the number of women lawyers, but that's not the only measure of progress women have made: there are more and more women in supervisory or management positions; many of our male colleagues stay home with sick children and do other forms of 'woman's work.'" Gerson aptly concluded, "So we've come a long way - but still have a long way to go. Sometimes, when I look at all that the women in our office are doing, and doing so well, I wonder if we are settling for mere equality."

I recently heard someone remark over their young daughter's future career options, "If she can't see it, she can't be it." True for most. Equally true is that some special soul has to be the first to be "seen" – to be scrutinized, challenged, questioned, measured, reviewed, and compared. And so, as I conclude this article and turn to polishing my argument for court tomorrow – where I will represent the United States Attorney's Office for the District of New Jersey – I can only say thank you Ms. Morris, for showing me.





**Editor:**

**Frances C. Bajada, Esq.**

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