



THE UNITED STATES
DISTRICT COURT FOR
THE DISTRICT OF NEW JERSEY
HISTORICAL SOCIETY

September 2014

Volume XVI, Issue 1

NUNC PRO TUNC

In Memoriam:

Inside this Issue:

Remembering The Hon. Stanley S. Brotman, U.S.D.J.	<u>2</u>
An Interview with The Hon. Anne E. Thompson, U.S.D.J.	<u>5</u>
The D.N.J. Federal Public Defender's Office: A Brief History	<u>10</u>
A Word from Leda Dunn Wettre, Esq. President of the Historical Society	<u>13</u>
<u>Save the Date!</u> October 2, 2014, for the Gala Celebrating the 225th Anniversary of the District of New Jersey	<u>15</u>

The Honorable Stanley S. Brotman, U.S.D.J. (1924-2014)



The Honorable Morris "Mickey" Stern, U.S.B.J. (1941-2014)



A Note From The Editor:

Due to publication constraints, Judge Brotman is remembered in this Edition, and Judge Stern will be remembered in the next Edition.

— Patrick J. Murphy III, Esq.



Carmen Natale

The Honorable Stanley S. Brotman, U.S.D.J.
(1924-2014)

By: Patrick J. Murphy III, Esq.

The Historical Society mourns the passing of the Honorable Stanley S. Brotman, U.S.D.J., on February 21, 2014. Even the briefest review of Judge Brotman's extraordinary 89-year life — a life defined by public service, dedication to family, and devotion to the law — serves as a humbling reminder of the sacrifices and achievements of our country's "Greatest Generation."

Like so many of his contemporaries, Judge Brotman answered the call to defend his country at an early age. In the winter of 1943, little more than a year after the Japanese attack on Pearl Harbor, Judge Brotman put his undergraduate studies at Dickinson College on hold and began active duty in the United States Army. As he left for the war from his family's home in Vineland, Judge Brotman recalled feeling the strength of his mother's gaze on his back — he was an only child. The difficulty of that departure, however, was softened by the noble thought that he was leaving to fight "the war to end all wars, and that we were going to be a part of it."

Judge Brotman, in fact, was an important part of it. After performing well on a series of Army-issued tests, he was sent to Yale University for a year of intensive language study. In 1944, he emerged from Yale fluent in Burmese and well-educated in the politics and culture of Southeast Asia, which was then predominantly controlled by the Japanese Empire.

Upon his arrival in Burma, Judge Brotman was attached to the Office of Strategic Services ("OSS"), the precursor to the modern Central Intelligence Agency. The OSS's role in the China-Burma-India Theater was crucial, and its mission involved both military intelligence and operations. In that so-called "Forgotten Theater" of WW2, the confluence of harsh terrain, ethnic and cultural diversity, and an intricate political



The insignia of the China-Burma-India Theater in WW2 — the so-called “Forgotten Theater” in which Judge Brotman served.

landscape complicated the Allies’ essential objective: defeating the entrenched Imperial Japanese Army.

Among the contributions to the war effort that Judge Brotman acknowledged was the OSS’s mission to locate and rescue Allied airmen whose planes had been shot down over Burma. Beyond that mission, however, it seems axiomatic that as one of the few members of the United States Army fluent in Burmese during WW2, Judge Brotman’s personal contribution to the OSS’s critical operations in the China-Burma-India Theater was significant, if not indispensable.



A Curtiss C-46 Commando, one of the work-horse cargo-planes that the Allies used to supply the Chinese Nationalist Forces from Burma and India. Among the OSS’s missions was the rescue of downed C-46 airmen.

After returning from the war, Judge Brotman transferred his undergraduate credits to Yale University, where he completed his degree in Eastern Studies in 1947. He then attended Harvard Law School, where he won the prestigious Ames Competition in 1950, and received his LL.B in 1951. Notably, both degrees were financed in-full by the G.I. Bill, which Judge Brotman recalled made his father very happy.

Indirectly, the G.I. Bill helped to provide Judge Brotman with far more than an education. While at Harvard Law School, he was introduced to a Radcliffe College student, Suzanne, who also had roots in South Jersey. The couple eventually married, raised two children, and enjoyed more than 62 years together. Judge Brotman elegantly stated that he and his wife agreed upon “what has to be accomplished in life, and what we are here to do.” When asked about the secret to his long and happy marriage, he responded simply: “Always look out for the other.”

In the Brotmans’ case, that maxim was applicable on both a personal and a professional level. In 1952, following a year-long return to active duty with military intelligence during the Korean War, Judge Brotman came home to Vineland and began his legal practice. Suzanne was his secretary for the first year-and-a-half. Thereafter, Judge Brotman partnered with Sam Shapiro, and over the next two decades, they steadily grew their firm to become among the largest and most prominent in South Jersey. Judge Brotman recalled his decades in practice fondly, and remembered forging friendships with his clients, watching their families grow, and becoming emotionally invested in the outcomes of their cases.

In 1974, at age 50, Judge Brotman was happy practicing law — he enjoyed the collegiality of the South Jersey legal community, and his law firm was prospering. As such, he did not aspire to or lobby for elevation to the state or federal bench. Despite that, he received a call from New Jersey’s then-United States Senator Clifford Case, who proposed submitting his name to fill the seat vacated by Hon. Mitchell Cohen, U.S.D.J. After discussing the matter with Suzanne and Sam Shapiro (the latter of whom threatened to “kick him in the [derriere]” if he didn’t accept), Judge Brotman assented to Senator Case’s proposal.

Judge Brotman received his commission from President Ford on March 13, 1975. As a new member of the Court, his brethren in the Camden U.S. Courthouse included the iconic District Judges Mitchell H. Cohen (who had assumed Senior Status) and John F. Gerry, as well as Circuit Judge James Hunter III. Judge Brotman recalled that a special dynamic existed among the group — they were thrilled to be judges, they enjoyed their work, and they respected each other’s abilities.

During his nearly four decades on the bench, Judge Brotman’s outstanding and diverse judicial abilities were manifest. In particular, his ability to settle cases was legendary. As Chief Judge Jerome B. Simandle has noted, Judge Brotman “had a knack for bringing people together.” Significantly, that knack



extended far beyond the District of New Jersey.

On May 1, 1980, Judge Brotman was appointed by the Third Circuit to sit by designation on the District Court of the United States Virgin Islands. For nearly thirty years, Judge Brotman continued to preside over cases in the D.V.I., and from 1989-1992, acted as the D.V.I.'s Chief Judge. Notably, during much of the time he sat in the D.V.I., Judge Brotman also carried a full load of cases in the District of New Jersey.

Presiding over cases in two different federal districts, however, was not the limit of

Judge Brotman's immense capabilities. In 1997, he was appointed by then-Chief Justice William Rehnquist to a seven year term on the United States Foreign Surveillance Court ("FISA"). His tenure on the FISA Court coincided with the 9/11 terrorist attacks, and the turbulent three years that followed.

With his service on the FISA Court, Judge Brotman considered that his life in public service had come "full-circle." Indeed, as a young man, he served the nation as a member of the precursors to both the Central Intelligence Agency (during WW2) and the National Security Agency (during the Korean War). Later in life, as a member of the FISA Court, he served our country by providing judicial oversight to those agencies, and others, during the War on Terror.

Shortly before his retirement, when asked why he had never left the bench for another pursuit, Judge Brotman responded that as a member of the federal judiciary, he was "doing the job I was supposed to do." Indeed, during his 89-year-life, Judge Brotman did many jobs — soldier, husband, father, lawyer, judge. He performed all of those jobs selflessly, and with honor. Though his loss leaves a void that can never be filled, his memory will always serve as an exemplar to our Court Family.

For more information about Judge Brotman's life, please visit the Historical Society's website at: <http://www.history.njd.uscourts.gov/honorable-stanley-s-brotman>, and watch the splendid interview Chief Judge Simandle conducted with Judge Brotman in 2011. Much of the information noted above, including the quotations from Judge Brotman, were drawn from that interview.



An Interview With
The Honorable Anne E. Thompson, U.S.D.J.



By: Marion Percell, Esq. and Dean Claudette St. Romaine, Esq.

On December 28, 2011, Assistant United States Attorney Marion Percell and Dean Claudette St. Romaine interviewed the Hon. Anne E. Thompson, U.S.D.J. in Her Honor's Trenton Chambers. During that interview, Judge Thompson recounted fascinating details about her upbringing, education, family, and career. Selected highlights of Judge Thompson's interview are published below, with significant abridgments denoted with the symbol [*]. The entire videotaped interview is available on the Historical Society's website at the following address: <http://www.history.njd.uscourts.gov/anne-e-thompson>.

Marion Percell: What was your family like?

Judge Anne E. Thompson: Well, I thought it was just an ordinary family. And I suppose it was. Although, now, looking back on it, I think I was probably very, very lucky, to have such, oh, strong, loving parents, who were married 58 years, before my father died. So, it was a wartime era. Second World War, that's when I grew up. Rationing, and traveling on the subway and the trolley to get to school every day. And, just a very different world. [*]

Thompson: I went to public school in Philadelphia. My mother decided the neighborhood school wasn't as good as it could be, so she found a demonstration school a long way away, and put me on the waiting list. And when I was accepted, I rode the subway and the trolley car and I walked to get to that school every day. . . . Then I went to the nearby junior high school, and then ultimately the girls' high school, which was a magnet school for—all academic girls' school in downtown Philadelphia. And it was from there that I graduated.

Percell: And what did you do after that?

Thompson: I went to Howard University in Washington D.C. . . . I decided I wanted to take part in the theater, and so I actually considered not going to college and going to some drama school there in Philadelphia, but ultimately went to Howard with the thought that I could be in plays. And I was. That was my interest throughout college. I wasn't interested in sororities or any other kind of activity. I was only interested in being part of the Howard players. And that was a wonderful experience for me. [*]

Percell: So how was it that you came to decide to go to law school?

Thompson: Well, I'm not sure there's a great distance between loving the theater and picturing the courtroom somehow as an appealing place. I'm not ashamed to say I had no high goals when it came to going to law school. It just seemed appealing, it seemed attractive, it seemed interesting. . . .

St. Romain: Even when I went to law school there were, only about a third of the class was female. When you went—

Thompson: There were about 5 or 6 of us out of a class of maybe 80, or something.

St. Romain: And did you feel like a ground breaker, or—?

Thompson: No. No, I didn't. You know, Howard was, it was a kind of a different world from the outer world, which is probably bad, and probably why I haven't stayed in touch very much with the school. But it was a little world unto itself. And so, gender discrimination was not something people thought about, and, as a woman I felt perfectly, just, just being in the minority as a woman was really meaningless. There was no discouragement of women going into law school or anything of that sort. That was one of the pluses, I guess, of having a little separate world. But it was a separate world. . . .

Percell: When did you meet your husband?

Thompson: Well, we met somewhere while I was at Howard. And he was from Trenton, so that's how I ended up here, in Trenton. He was a native. He was a dental student, and he was a fraternity brother of my brother, who had gone to Lincoln University in Oxford, Pennsylvania, which was a very popular school at that time for young black men. A large percentage of which went on to medical or dental school. Kind of like Franklin and Marshall, in the outer world, where a large percentage of the students go on to medical or dental school. . . . My life sort of began here, in Trenton, with the War on Poverty. And the first job I had here with the local War on Poverty agency, which was United Progress Inc. And I worked writing a proposal to enlarge Legal Aid, and it was funded. And it was a, that was the 60s, 'cause I married in '65, and it was the bustling excitement of reform and correction of the 60s.

Percell: So you came to Trenton in about 1965?

Thompson: Yeah. And then, very shortly after working for the Legal Aid Society, the Public Defender established itself in New Jersey, and I really wanted to go there, because they were doing criminal work, which I was attracted to. And I applied and got a job with the Public Defender's Office, when it was beginning. We were the first ones to open the office in Trenton, right across from the courthouse, on South Broad Street.

Percell: That was in 1967?

Thompson: '67. . . . It was just very exciting to me. It was always fun. And I must, well, it doesn't sound very great, but I think I kind of always followed what was fun, and what I liked to do. I always said to my law clerks, I think, that when I got a paycheck at the end of the week or the month or whenever, it was always something of a surprise, because for me it was always what did I, what was fun, what did I enjoy, and I was always kind of surprised that anybody would pay me to do, to have so much fun. Or to do what I really liked doing. [*]

Percell: So when you left the Public Defender's Office, what, what did you do then? Did you do, were you working, or were you just home?

Thompson: Well, I thought I was going to be just home. And I sort of was, but the local town manager asked me if I would serve as the municipal prosecutor for Lawrence Township. And he said it's just very part time, which it was, a couple times a month, so of course I said "yes." So I did that for a couple of years.

Percell: What was that job like?

Thompson: Um, very, just a couple times a month. Loved it. I've always loved everything I've done as a lawyer. So, you can't ask me, was there one that I didn't like. I've loved every single job I've had as a lawyer. And, it was a great job, I learned a lot. I was municipal prosecutor, and tried drunken driving cases, and housing code violations, and all sorts of administrative proceedings in the municipal court. It was great. Great fun.

Percell: What did you do next?

Thompson: Well, you wouldn't believe this, but actually I was appointed a municipal court judge, with that rather humble and modest background. I had worked in the McGovern campaign, while I was home with my second child. Because I was, have always been really pretty much a pacifist, and was very much against the Vietnam War. Senator McGovern was the anti-war candidate, and I was persuaded to run as a candidate, to be a delegate to the Democratic national convention in Florida, in 1972. . . . And I won. . . . And I guess I'm trying to explain why I came to know the mayor of the city of Trenton. I had met him when I was working for the anti-poverty program. Because I went around and talked to the head of the bar association and all the political figures in Trenton, to talk about how to draft a proposal that would meet the needs of the poor in the Trenton area. Something more than the very, very, ultra-modest legal aid society program that was presently in place at the time, that had volunteer lawyers who came in to a little office maybe once a week, or maybe once a month. . . . When I was invited to be a delegate, they said, "We'll get a sound truck, and you'll ride on the sound truck and give speeches," and I nearly fainted. I was so sick at the stomach at the very thought of doing things like that. Well, I must tell you, by the end of the campaign I was going everywhere, giving speeches anywhere, including every black church in the Trenton area, at the end of the service, can you believe, they let me do it, and I did it. And I went everywhere and so when the votes came in, it was pretty high, you know, kind of surprisingly high for me. I knew the mayor, and he lived about 5 blocks from here. And he asked (they were going from one municipal court judge to two), "wouldn't it be a nice idea," I guess, he must have thought, to have me as the second municipal court judge.

Percell: I'm going to guess that the first municipal court judge was a white man?

Thompson: Yes, of course. . . . Lovely, lovely man. So, we became, we were the two-judge court. And it's a three-year term. And just before the term ended— See, when I tell you how lucky I am, you won't believe it. Brendan Byrne appointed me county prosecutor, so that I never had to be reappointed.

Percell: How did that come about?

Thompson: It was a shock, wasn't it? I mean, you think about it. It was a shock. I mean, interviewing me is interviewing luck. And no ambition, that's the other thing. Because I didn't ever aspire to any of these things. . . . Because I really, if somebody asked me honestly do you, would you want to be county prosecutor, I would see it as such an overwhelming post, that of course not. I had a very supportive husband, who was, just very supportive. And so, I don't know how I came to the attention of Governor Byrne. But I was interviewed for the job, and— My husband and I were both very active in the life of Trenton. He never was involved in politics in terms of being an officeholder, he was a practicing dentist, but he loved Trenton and the life of Trenton. And I was interviewed by Governor Byrne. I don't know. It just happened. [*]

Percell: How did it come about that you did leave [the job as Mercer County Prosecutor]?



Judge Thompson as Mercer County Prosecutor with members of the Mercer County Prosecutor's Office

Thompson: By accident. Just like getting the job as county prosecutor was by accident. I think there had been several other candidates who were knocked out because of various reasons having to do with, well, something in the political life of the community. So that I was the dark horse to be the county prosecutor. The last person, undeserving politically. I hadn't done enough, really, politically, to be considered. But, Mercer County was desperate at that point for a Democrat. Because there was a Democratic governor, and generally, that's where he chooses. And, quite frankly, my predecessor was not beloved by the political persons at that time, though he was well loved within the office. Now, this job, again, for me, it's all been luck. I did not apply for, never would have thought of applying for— I had only tried a case in federal court once, that was a murder case. I had been sort of a CJA attorney. It was during the early 70s, when I was at home with my children, and the magistrate judge I happened to know, and he called me and asked me if I would take this murder case of a woman, a black woman who was charged with murder of her soldier husband down at Fort Dix. . . . Now, this job, I didn't apply for. Ironically, I was appointed to be on the selection committee. . . . It was just a fluke that I was appointed to the merit selection committee.

And we interviewed 60-some candidates for the United States District Court. There were four vacancies. Judge Barlow died o[n] a weekend during this, the interview process. So that instead of three new spots by the Omnibus Judgeship Act of Jimmy Carter, we had a fourth spot because of the untimely death of Judge Barlow. Four vacancies. We interviewed all the candidates who applied. Sixty-some applied through an ad in the Law Journal. See this was a different era. And we were to make recommendations to the senators. By that time, Bill Bradley had won, so it was Harrison Williams and Bill Bradley. And we recommended 13 people. And I was one of the selection committee. We sent those names to the senators, and went about our job. I was county prosecutor at the time. Got a call from Senator Williams, my secretary told me. . . . I said, "Oh, Senator, I hope you are pleased with the list." So I'm trying to make some conversation. And he said, "Yes, very fine list. But we would like to add you to the list." Well, I could have fainted. I said, "But Senator, I, you know, I didn't apply, I was on the selection committee." "Well, it was our selection committee. And I've talked to the other members of the committee, and they're very enthusiastic about adding you to that list. And we'd like to add you." Well, I nearly fainted. Senator Bradley called me with the same conversation. "We'd like to add you, would you permit us to consider you, to field your candidacy," whatever. I remember being just absolutely stunned, talking to my husband. I, I can't do it, it doesn't seem right. I wasn't, I wasn't a candidate. Besides which, I don't want that job. I'm hoping Governor Byrne will reappoint me to this job that I love. I don't know any of that— I've been to the federal court one time, it was very cold, stiff, there was nobody in the hallways. It wasn't like over here at the county courthouse, where we're having fun. I'm not interested, it's kind of a staid old job, lifeless. My husband said, "Well, you can't say no to that." And so the long and short of it is, both senators invited me to come to Washington to be interviewed. I got on the train and went. Not at all enthusiastic about it, but just kind of, one side of you tells you there are certain things you should do, you must do. And so I did it. And maybe a week later, I received a phone call . . . saying,

"We've sent your name to the White House, and we're asking for an embargo, don't say anything to anybody, don't announce anything. We're not going to announce it until Thursday, and of course they announced it on Wednesday, and it was all over the newspapers, the four candidates who had been chosen, Debevoise, Ackerman, Sarokin, and myself. I mean, that's, the truth of the matter is that's how it happened. . . . That was April of '79. And I would have been up for reappointment as county prosecutor in



"The Four" — District Judges Sarokin, Thompson, Ackerman and Debevoise, with Senators Bradley and Williams.

September of '79. No, I guess, '80, I guess I would have had til '80. But anyhow, I hope I'm going to be reappointed. [*]

Percell: What was it like being the first African American and the first woman judge, and how did you feel about that role?

Thompson: As a woman lawyer, in my era, you were kind of used to being in the great minority. I didn't think much about it at all, to be perfectly frank. If people were nice to me, I'd be nice to them. And people were nice to me. So, it never occurred, I didn't think about it. I just did, I was just trying to figure out what I'm supposed to do next, and I really didn't think about it. I do remember, one day we got a note from, I think it was the Bergen County Bar or something, they wanted us to appear on some panel discussion on a Saturday morning. And I thought to myself, "Oh, my gosh," because I had just enough babysitting coverage to get me through the week, but not on Saturdays. But how can I say that? I can't say that. So you say, you say "of course." . . . And then I remember signing the memo which was to be sent to all the other judges, I remember signing it "Sole Sister." So, I think about that, I must have had some sense of being the only one, but I really didn't think about it.

St. Romain: Did you, did you think at all of yourself as a role model, if you had a . . . black litigant who came before you, a lawyer, or a young female lawyer, did you feel any, say obligation . . . to teach them, or to be a role model? . . .

Thompson: There were just so few that, I, I can't remember that. I can only remember a certain pride from time to time as time, as the years passed, when I would see a young black lawyer, and thinking how, how wonderful to see that young black lawyer as an Assistant United States Attorney or as a role in which traditionally one would not see a black person. Or a woman lawyer trying a case. . . . [*]

Percell: What was the most fun you've had as a judge?

Thompson: Well, I've loved having law clerks. . . . My relationship with my law clerks has been the tremendous joy, sense of pride, love of my life. And I have been, here again, lucky. Because after all, a half hour interview really cannot tell you a lot about the person you're interviewing. So it's a leap of faith, on the part of the law clerk, and on the part of the judge, when a selection is made. But I have this unbelievable family of law clerks that, I just cannot describe the joy, the love they have brought to my life, the gratification, the sense of pride, the friendship. . . .

Percell: What was the hardest thing you've ever had to do as a judge?

Thompson: Well, there's emotionally hard and academically hard. A lot of the patent cases, some of the more, really difficult patent cases, scientific cases, have been the most difficult. But, as a human being, I would say that some of the sentences— when I sit in the Virgin Islands, they have life without parole there. That kind of thing. That kind of sentence, for first degree murder. Really harsh sentences. I would say, I think any judge would say that, emotionally, and as a human being, that's hard. . . . I don't think any judge enjoys imposing punishment on people. That's not fun. And it is exhausting. I mean you come in here after that and you're drained as a human being. . . . The long sentences, I mean it just seems like such a waste. . . . [*]



Judge Thompson surrounded by her son Billy, daughter Sharon, and husband Dr. William Thompson, at her swearing-in by Judge Clarkson S. Fisher, U.S.D.J.

Percell: What do you think are the biggest changes you've seen during the time you've been on the bench, or during the time you've been a lawyer, for that matter?

Thompson: Well, the number of women, obviously. I mean, it's very, very, very different, as a lawyer, from the way it was back in the early days when I first became a lawyer. And the number of blacks who are active in the bar. Unbelievable, in comparison. . . .

Percell: What do you see in your future? Do you . . . look forward to retiring at some point and doing something else?

Thompson: I like to do this. . . . As long as my health holds, I would prefer to do this. Now, if my husband had lived, that answer might be different. But, since he is not with me anymore, he's been dead twelve years, and he was a very wonderful, loyal, devoted husband, and I miss him very, very, very much. And since he's gone, I think that would be my answer.



Judge Thompson in 2013

The D.N.J. Federal Public Defender's Office: A Brief History

By: Thomas P. Sheridan, Esq.

Since its inception more than forty years ago, the Federal Public Defender's Office for the District of New Jersey (the "Office") has succeeded despite many unique challenges and limitations. The Office does not have the luxury of choosing its clients, but instead, takes all cases the District Court assigns. For that reason, the success of the Office is not only measured by wins at trial, but also by the fulfillment of its mandate to ensure that all indigent criminal defendants prosecuted in the District of New Jersey have access to high quality legal representation. Unquestionably, the Office's history of success is attributable to the dedicated attorneys, investigators and support staff that work tirelessly to protect their clients.

I. The History Of The Office.

The Office was created in 1973, and can trace its roots back to the landmark case of Gideon v. Wainwright, 372 U.S. 335 (1963). In Gideon, the defendant, Clarence Earl Gideon, was charged with the felony of having broken into a poolroom with intent to commit a misdemeanor. Gideon requested that the Florida state trial court provide him legal counsel because he did not have the means to pay for any attorney. Gideon's request was denied. Despite Gideon's protestation that he was entitled to be represented by counsel, the trial court was unconvinced, and Gideon was left to conduct his own defense. Although Gideon put forth an able effort defending himself at trial, he was found guilty and sentenced to serve five years in prison.

After Gideon's habeas corpus petition was denied by the Florida Supreme Court, the Supreme Court of the United States granted certiorari to hear the simple question: "Should this Court's holding in Betts v. Brady 316 U.S. 455 (1942) be reconsidered?" In Betts, the Supreme Court held that denial of an indigent defendant's request for legal counsel did not, given the totality of the circumstances, necessarily violate the Due Process Clause of the Fourteenth Amendment. As a result of that holding, the Betts court affirmed defendant Smith Betts' conviction for robbery. The Gideon Court answered its own question in the affirmative, overruled Betts, and held that the right to counsel is essential to fair trial and therefore required under the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment. (Notably, counsel

was appointed to represent Gideon before the Supreme Court of the United States.)

The Court's reasoning is instructive, underscoring the significance of a criminal defendant's right to counsel and the vital role of public defenders in the criminal justice system. The Gideon Court observed that:

[R]eason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to be an obvious truth.

...

The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.

...

This noble ideal [of a criminal defendant's right to a fair trial before impartial tribunals] cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.

Drawing from the decision of Powell v. Alabama, 287 U.S. 45 (1932), the Gideon Court concluded that even an "intelligent and educated layman...requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence." Thus, in Gideon, the Supreme Court clearly established the role of the public defender as "fundamental and essential to a fair trial."

To effectuate the directive of the Gideon decision, Congress enacted the Criminal Justice Act of 1964 (the "CJA") which provided the legislative authority for providing legal counsel to indigent defendants. The CJA mandated that every defendant charged with a felony or a misdemeanor (other than petty offenses) must be advised that they are entitled to counsel, and that counsel must be provided to those that seek but cannot afford an attorney. The CJA also established the first system for appointing and compensating lawyers to represent indigent defendants. Additionally, the CJA required that each United States District Court formulate a plan for the provision of counsel to eligible defendants.

Initially, the District of New Jersey elected to create a panel of private attorneys (the "CJA Panel") who were well qualified and experienced in criminal matters, and would be appointed by the trial court, as necessary, to represent indigent defendants. By 1973, however, the CJA Panel with 100 attorneys could not keep up with the mounting caseload, and the District Court responded by creating the Office of the Federal Public Defender of the District of New Jersey.

Roger Lowenstein was selected as the first Federal Public Defender in New Jersey, and headed a small office of four attorneys (including Lowenstein), an investigator, and two clerical staff members in Newark. Despite the inauspicious location of the office in a former funeral home, Lowenstein set very high standards for his office because he felt that "the federal public defender...has to be better than the average attorney in state court because the risk of wrongful prosecution and conviction are greater in federal court... [because] the nature of the offenses is often difficult for the average juror to appreciate or understand." Lowenstein drew upon the experience of the state public defenders by hiring his first attorneys – John F. McMahon, Thomas S. Higgins and John J. Hughes – from the Essex County Public Defender's Office. Lowenstein served one four-year term, and in 1977 John F. McMahon was selected to serve as the Federal

Public Defender for the District of New Jersey.

McMahon is widely credited for shaping the Office into its current form. Under McMahon's watch, from 1977 to 1997, the Office expanded from a small group with an office in a former funeral parlor in Newark, to a staff of forty-two employees in four offices (the Newark, Trenton and Camden vicinages as well as an office in Wilmington, Delaware). Those that worked under McMahon, however, note that his most significant contribution was not the mere expansion of the Office, but the positive environment and collegiality he imparted. Indeed, the Hon. Tonianne Bongiovanni, U.S.M.J. – a former Assistant Federal Public Defender in the Office – credits McMahon with having created a supportive environment in which the staff was tight-knit and like family. Current Federal Public Defender Richard Coughlin describes McMahon as a great teacher who was generous with his time. The collegiality of McMahon's office remains, and is continued by his successor.

II. The Office Today.

In 1997, Richard Coughlin was first selected by the Third Circuit to serve as the Federal Public Defender and was most recently re-appointed for another four year term in July 2013. Coughlin has dedicated his entire career to public service, first as a Deputy Attorney General before becoming an Assistant Federal Public Defender in 1985. Coughlin's dedication to the fair administration of criminal justice is not limited to his career as a public defender; in 2003, he traveled to Iraq as part of a team of judges, prosecutors and defense lawyers to assess the Iraqi judicial system.

In addition to the inherently difficult position of having to take any and all clients assigned by the court, the Office has also recently experienced administrative challenges. Since September 2013, the Office has contracted from twenty-two attorneys to nineteen due to certain budgetary constraints and federal personnel calculations based on caseload and type of cases. Despite these challenges, the Office continues to provide high quality defense counsel in over 1,300 representations a year (as calculated in a weighted formula related to the nature of each case).

Indeed, it is during moments of such adversity that McMahon's legacy and Coughlin's positive outlook buoy the Office. Judge Bongiovanni recalled that Coughlin once told her that he would "rather look for the positive in people than the negative." McMahon's positive outlook and faith in a representational criminal justice system is evident in an Op-Ed he wrote in *The New York Times* after returning from Iraq. After hearing stories of horrific torture, injustice and rampant bribery of the judiciary under Saddam Hussein, Coughlin saw the positive and "quickly found reasons for hope." Coughlin highlighted Iraqis that were dedicated to reestablishing a functional court system and advocated for continued investment to modernize the courts and train judges prosecutors and defense lawyers in order to create "a foundation built on respect for the rule of law and human rights." Indeed, Coughlin's aspirations for Iraq are equally applicable to the role of the Office of the Public Defender in the American system. Public defenders ensure that indigent defendants receive zealous and competent representation, which engenders trust and respect for the rule of law and the criminal justice system.

**FALL 2013 JUDICIAL RECEPTION AND CELEBRATION OF THE
NATIONAL LANDMARK DESIGNATION OF THE
CLARKSON S. FISHER FEDERAL BUILDING AND
UNITED STATES COURTHOUSE**

By: Leda Dunn Wettre, Esq.

Last autumn, the Historical Society was proud to host a joint Judicial Reception and celebration of the listing in May 2012 of the Clarkson S. Fisher Federal Building and United States Courthouse on the National Register of Historic Places. The event was well attended by the Bench, Bar and Courthouse staff. Chief Judge Jerome B. Simandle paid tribute at the reception both to his devoted colleagues on the Bench and to the historic courthouse in which many of them perform their duties. Leda Dunn Wettre, on behalf of the Historical Society, spoke of the essential contributions of the Court's Judges both on and off the Bench.

A special guest from the offices of the Government Services Administration in Washington, D.C., Historic Preservation Specialist Donna Andrews, discussed the unique aspects of the Fisher Courthouse that led to its designation as a landmark worthy of inclusion in the National Register of Historic Places. Ms. Andrews noted that the building was funded by the Public Works Administration, and is a notable example of the Federal Government's response to the Great Depression. Trenton was hit hard by the Depression, and its unemployment rate in the 1930s rose to 16%. The building of the Courthouse brought much-needed jobs to the region, and was closely followed in the local news as a significant event. The building was dedicated on October 15, 1932. It is considered a "sister building" to the Camden courthouse, both stylistically and because they were constructed virtually simultaneously. Ms. Andrews further noted that the Fisher Courthouse contains a treasure of WPA-era art in the murals of artist Charles W. Ward, including *Progress of Industry*, *The Battle of Trenton* and *Rural Delivery*.

The Historical Society thanks Chief Judge Simandle for his participation and remarks, Magistrate Judge Douglas E. Arpert for his leadership in planning the event, and Christopher Mercer and Donna Andrews of the GSA for their help and support with the reception.



Christopher Mercer and Donna Andrews of the GSA, with Leda Dunn Wettre, Esq., President of the Historical Society, and the Hon. Jerome B. Simandle, C.J.U.S.D.C.



The Hon. Jerome B. Simandle, C.J.U.S.D.C.



Donald A. Robinson, Chairman of the Historical Society, and the Hon. Peter G. Sheridan, U.S.D.J.



The Hon. Jerome B. Simandle, C.J.U.S.D.C, the Hon. Morton I. Greenberg, U.S.C.J., and the Hon. Anne E. Thompson, U.S.D.J.



Keith Miller, Esq., Vice-President of the Historical Society, the Hon. James C. Clarke, U.S.M.J., and Leda Dunn Wettre, Esq., President of the Historical Society



William P. O'Shaughnessey, Esq., the Hon. Mary L. Cooper, U.S.D.J., and Adam Saravay, Esq.



The Hon. Michael A. Shipp, U.S.D.J., and the Hon. Douglas E. Arpert, U.S.M.J.



The Hon. Rosemary Gambardella, U.S.B.J., and the Hon. Kathryn Ferguson, U.S.B.J.

Save the Date

The Historical Society of the United
States District Court for the District
of New Jersey

Presents

**A Gala Celebrating the 225th Anniversary
of the**

**United States District Court
Second Oldest Court in the Nation**

The Honorable Samuel A. Alito, Jr.

Associate Justice of the Supreme Court of the United States—Honorary Chair

Thursday evening, October 2, 2014

New Jersey Performing Arts Center, Newark