

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



LETTER FROM THE PRESIDENT

Welcome to the Historical Society for the United States District Court for the District of New Jersey, and thank you for joining our new, exciting group.

Why has a Historical Society been formed? What are our plans? Our intent is to bring together judges, lawyers and historians who want to do more than develop a chronological record of events that happened in the Federal Court in New Jersey. We want you to help us enjoy the spirit of the Federal Family that has been a unique feature of our beloved Federal Court.

In our Newsletter there will be some anecdotes that we believe will demonstrate that the Court has been more than black-robed judges issuing their edicts from a distant bench. We hope that you will enjoy reading these stories plus columns about historical events and will be inspired to make your own historical contribution to the Society. Our endeavor is to collect and record history, whatever can be found or remembered.

We will be enjoying, with you, several events, including a banquet, each year. Our first get together will be a cocktail party at Bally's Park Place, Atlantic City, on Friday, May 15, 1987 at 6:00 p.m. during the State Bar Association's convention. Join the fun.

We need your help. Please let us know what committees interest you.

Donald A. Robinson
President



The State House, built in 1792, hosted the federal courts prior to 1876, when a new federal building was completed on East State Street in Trenton. This view of the state capitol shows the building as it looked after 1848, when a new facade and dome designed by John Notman were completed. After a disastrous fire in 1885, the familiar modern facade was designed as part of the rebuilding.

SOCIETY ELECTS OFFICERS

On October 15, 1986, at its first meeting, the Board of Trustees elected the Society's officers: Chief Judge Clarkson S. Fisher, Chairman; Donald Robinson, President; George Kugler, Vice President; Elizabeth Defeis, Vice President; Joseph Markowitz, Vice President; Ann McCormick, Vice President; Allyn Lite, Treasurer; William Walsh, Secretary.

The Board of Trustees is comprised of the following: Hon. Vincent P. Biunno, Dean Elizabeth Defeis, Joseph N. Dempsey, William L. Dill, Jr., Nicholas C. English, M. Joan Foster, Daniel J. Gibbons, William D. Hardin, Stanley Katz, George F. Kugler, Hon. Frederick B. Lacey, Arthur S. Lane, Sally Lane, Allyn Z. Lite, Joseph H. Markowitz, Ann G. McCormick, Hon. H. Curtis Meanor, A. Ronald Nau, David A. Parker, Donald

A. Robinson, James J. Waldron, William B. Scatchard, William T. Walsh. Ex Office: Hon. Clarkson S. Fisher, Hon. Mitchell H. Cohen, Hon. John W. Bissell, Hon. James Hunter III, Hon. Leonard I. Garth, Hon. Vincent J. Comisa and Hon. Jerome B. Simandle.

HELP

Due to what is hoped to be a minor and passing lapse of originality on the part of the members of the newsletter staff, the newsletter is nameless. Help us find a name for our newsletter or perhaps the newsletter, for lack of a name, will itself be lost in history. We already have one entry ("Nunc Pro Tunc") submitted by the Honorable Vincent Biunno. Submit all other suggestions to James Waldron, Clerk, United States Bankruptcy Court, Federal Building, 970 Broad Street, Newark, New Jersey 07102.

RECOLLECTIONS

Many members of the federal bar, particularly the more senior members, have had the opportunity to take part in events of historical significance as well as events which simply may be the genesis of the amusing court-house stories that are passed along from attorney to attorney. We do not want to lose those stories and hope that this column will provide a means through which a part of the Court's history can be preserved. We ask that the members of the federal bar share with us their recollections, such as the one that follows.

CAN YOU TOP THIS? A Sui Generis Settlement By Donald A. Robinson

All litigators have their war stories about settlements of lawsuits. And some of those tales even include the role of the Judge. Here is one, though, that undoubtedly is one of a kind. This is not fiction; I was there.

Judge Lawrence A. Whipple, who served on the Court from 1967 until his death in 1983, was a master at settling cases. He had many techniques. One day he ordered counsel and their clients into his Chambers for a settlement conference. There were the usual back and forth discussions. Judge Whipple patiently listened, saying nothing, for he had a plan. Finally, the parties came closer and closer until they were only a few thousand dollars apart. At that point, the good Judge spoke. He asked both counsel, but only one of the parties, to leave him alone with the adamant defendant who was obviously holding back a couple of thousand dollars.

After about five minutes, the Judge emerged from his inner office. His perpetual mischievous grin had widened. The defendant was equally happy. Strangely, though, the defendant had the Judge's robes draped over his arm. Why was he carrying the robes for His Honor? He wasn't.

Judge Whipple had given his robes to the defendant, who in return agreed to pay the few thousand dollars needed to enable the Judge proudly to say: "Next Case!"

ESSAY COMPETITION

The Historical Society of the U.S. District Court for the District of New Jersey will sponsor an essay competition to commemorate the 200th anniversary of the Court's first sitting. The competition will be conducted in three categories. A first prize (\$2,500) and second prize (\$1,500) will be awarded in each category. The categories are as follows: (1) undergraduate students' (2) graduate and pro-

fessional school students; (3) open (e.g., lawyers, news reporters, historians, any interested individual, etc.).

The topic of each essay must be germane to the history of the federal trial courts (including bankruptcy) in the District of New Jersey, or their personnel, from 1789 to present. Each essay is to be no longer than 60 pages including footnotes.

All entries must be received not later than September 15, 1988, and selected essays, in addition to the winners, are expected to be published as a collection or society journal in time to mark the 200th anniversary, which will be December 22, 1989.

Persons interested in participating should write to: Essay Program, District Court Historical Society, P.O. Box 419, Newark, NJ 07102, for a copy of the competition rules and other material. Notice also is going to colleges and law schools.

HISTORICAL SOCIETY COMMITTEES

Each member of the historical society's trustee board serves on one or more working committees. Because everyone who joins the society is invited to serve on the committees, we've outlined their functions below, adding the names and phone numbers of chairperson(s).

MEMBERSHIP: Allyn Z. Lite, Esq. (201-623-3000), chairperson. An initial mailing of membership applications brought a return of 80 members in the first month. Membership now totals 206.

ARCHIVES: Stanley N. Katz, Esq. (201-645-6697), chairperson. A professional archivist (Susan Tobin) is at work preparing an inventory of materials available at the National Archives Center, Bayonne, N.J. and in institutional and court libraries.

BIOGRAPHICAL COMMITTEES: The seven subcommittees have a December 31, 1987 deadline for submission of their work on court history and participants.

U.S. DISTRICT COURT AND JUDGES: Hon. Vincent P. Biunno (201-645-3930) and Hon. Leonard Garth (201-645-6521), co-chairpersons. (This group combines two subcommittees because it was felt that the history of the court can't be sensibly divorced from the history of the judges who have served it.) Members will develop individual biographies of judges, as well as an overall court history.

U.S. BANKRUPTCY COURT: James J. Waldron (201-645-3930) and Joseph H. Markowitz, Esq. (609-896-2414),

co-chairpersons. Members will write sketches of bankruptcy referees and judges, as well as a court history.

CLERKS: Allyn Z. Lite, Esq. (201-623-3000), chairperson. This group will produce individual biographies of court clerks.

LAWYERS: Joseph Dempsey Esq. (201-870-2111), chairperson. Members will develop biographical sketches of prominent lawyers admitted to practice in the court, including those originally admitted in 1789.

U.S. MARSHALS: Arthur Borinsky (201-645-2404), chairperson. This group will develop biographies of people holding the position of U.S. Marshal in New Jersey and a history of the New Jersey Office of the U.S. Marshal.

U.S. ATTORNEYS: Daniel J. Gibbons, Esq. (201-621-2787), chairperson. A profile of the New Jersey Office of the U.S. Attorney and those serving in that office will be developed by members of this Committee.

FEDERAL PUBLIC DEFENDERS: John F. McMahon Esq. (201-645-6347). Members will produce a history of the Federal Public Defender's office in New Jersey and biographies of the people who have held the office of Federal Public Defender.

MEMOIRS—ORAL, WRITTEN AND VIDEO: M. Joan Foster Esq. (201-992-4800) and Daniel J. Gibbons, Esq. (201-621-2787), co-chairpersons. This committee is at work drafting an outline of topics and procedures for gathering memoirs, as well as a list of those to be interviewed.

PHOTO COMMITTEE: W. Hunt, Jr. (201-623-1699), chairperson. A written history needs illustrations and this committee is charged with developing a pictorial history of the court. Photos or drawings pertinent to court history are needed, but it is suggested that only photocopies or copies of original prints be submitted at this stage.

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Editors
Ann G. McCormick
James J. Waldron
Sally Lane

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

MEMBERSHIP APPLICATION

Name _____

Address _____

City _____ State _____ Zip _____

Please enter my name as a member of the Historical Society of the United States District Court for the District of New Jersey in the following category:

Annual Memberships

- _____ Student - \$5.00
- _____ Regular - \$25.00
- _____ Sustaining - \$50.00
- _____ Patron - \$100.00

Life Memberships

- _____ Sponsor - \$1,000.00
- _____ Benefactor - \$2,500.00

All Memberships may be held only by individual persons.

Applications, with checks made payable to the U.S.D.C.N.J. Historical Society, should be returned to Allyn Z. Lite, Treasurer, Goldstein, Till & Lite, 60 Park Place, Newark, NJ 07102. Inquiries may be directed to Honorable William T. Walsh, Secretary, (201) 645-6485.

I am interested in participating in the following committee(s) of the Society:

- _____ Archives Committee
- _____ Bankruptcy Court Committee
- _____ Biographical Committee

- _____ Membership Committee
- _____ Memoirs (Oral, Written & Video) Committee
- _____ Publications and Publicity Committee

PUBLICATIONS AND PUBLICITY COMMITTEE: Ann G. McCormick, Esq. (201-622-2235) and James J. Waldron (201-645-3930), co-chairpersons. The final editors of what the Historical Society prints and compilers of the semi-annual newsletter, this committee also acts as the clearing-house for press releases.

BICENTENNIAL COMMITTEE: Hon. John W. Bissell (201-645-2517) and Hon. Vincent P. Biunno (201-645-3930), co-chairpersons. This group has established the guidelines for an essay competition on subjects dealing with the history of the Court and the people connected with it. Entries are due September 15, 1988, and first and second prizes will be awarded in three categories of participants: undergraduate students; graduate and professional school students; and all others (lawyers, historians, etc.). Selected essays will be published by the Society.

LECTURE COMMITTEE: M. Joan Foster Esq. (201-992-4800) and Allyn Z. Lite, Esq. (201-623-3000), co-chairpersons. This Committee will organize lectures presented on behalf of the Society. It also will act as a liaison with other groups, such as the Association of the Federal Bar, Federal Bar Association and county bar associations, in connection with lectures on historical issues.

CEREMONIES AND BANQUETS: Joseph H. Markowitz, Esq. (609-896-2414) and William T. Walsh (201-645-6485), co-chairpersons. The Society will hold a reception in May at the State Bar Association meeting and an annual banquet in October. See Coming Events for details.

PROFILE

In each issue of the Newsletter, we hope to include a short biographical sketch of an eminent jurist or attorney. Among those to choose from are the attorneys first admitted to the Bar of the federal court in New Jersey on December 22, 1789. They were William Paterson, Abraham Ogden, Elias Boudinot, Elisha Boudinot, John DeHart, Robert Ogden, Joseph Taylor, Robert Morris, Richard Stockton, Samuel W. Stockton, Matthias Williamson Aaron Ogden, Frederick Frelinghuysen, Andrew Kirkpatrick, Richard Howell and Aaron D. Woodruff. Also not to be forgotten are the first two District Judges, David Brearley and Robert Morris, each of whom served as Chief Justice of the Supreme Court of New Jersey before appointment to the federal bench. We encourage our members to submit a "Profile" for publication in the Newsletter regarding these or other eminent jurists and attorneys.

IN THE BEGINNING

Hon. Vincent P. Biunno

In the beginning, there was no executive and no judiciary for the new nation. There was only a congress, a one-house legislature, and a de facto one at that. Its hoped-for de jure status depended on the military outcome of the drive for independence.

This is not to say that in the beginning there was nothing, or that there was chaos. Quite the contrary. New Jersey is a good example. On July 2, 1776, New Jersey not only declared its independence but also adopted a constitution that served it well, without amendment, for the next 68 years.

It set up a government, not unlike the colonial government it had worked under since Lord Cornbury's ordinance of 1702, and also not unlike that of the first settlement at Elizabethtown of 1664, and at Newark in 1666. It had a General Assembly and a council for legislation, but no longer were its laws subject to disapproval by the king in council at Whitehall. It



The Beaux Arts federal building, completed in the centennial year of 1876, provided the federal courts with their first real home in the state capital. Long after its replacement by the current federal building, this handsome 19th century building was demolished in 1961, to make way for a modern bank.

had a governor, but he was now elected by the General Assembly, not commissioned by the king. All the courts continued in existence, including the Supreme Court (equivalent to King's Bench), the Chancellor (the governor, as before), and a court of appeals of the last resort (the governor and council) as before, but its decisions no longer could be reviewed by the king in council.

There were no courts at all at the federal level until 1789. In the beginning, the articles of confederation did not exist. So, in New Jersey as in other states, there was a fully organized and functioning legislature, governor and judiciary. And the dedicated patriots in charge were determined to keep it so. They knew they were in a war, in a fight for life, that they could hope to win only if order was preserved, and preserve it they did.

The de facto General Assembly moved rapidly. It had been organized as a provincial congress, independent of the royal government, on May 23, 1775 (soon after news of Lexington and Concord had been carried by a dispatch rider). The second congress met at New Brunswick on February 2, 1776 and again at Burlington on June 10, 1776. Six days later it declared Royal Governor William Franklin "an enemy to the Liberties of this country" and ordered his apprehension. (He was taken to jail in Connecticut.)

After voting for independence and to adopt its constitution (on July 2, 1776), the provincial congress enacted laws and resolutions to keep matters in good order until a new legislature was elected and convened. This was accomplished on August 27, 1776, when the First General Assembly met at Princeton under the new constitution, less than two months after the new state constitution.

Less than two months after that, on October 5, 1776, it enacted a law creating a court of admiralty in New Jersey, as there had been none and such courts were needed to try cases arising out of the war. That state admiralty court was continued under various statutes until the federal courts were established in 1789.

The District Court organized December 22, 1789 at New Brunswick. Its first judge was David Brearley, who had been Chief Justice of the Supreme Court of New Jersey from 1779 and resigned when appointed to the federal bench. He was succeeded by Robert Morris, who had served as Chief Justice from February, 1777 to June, 1779, and who served the federal courts until 1815.

The first clerk was Jonathan Dayton, who at 27 had been the youngest delegate to the constitutional convention. He was a member of the N.J. Council (Senate) in 1789, and in 1790 became an assemblyman and speaker of that house. He then served in the 2nd, 3rd and 4th U.S. Congresses, and was speaker of the 5th. He also served a term in the U.S. Senate, and later became active in a project for a canal around Ohio Fall, and as a result had Dayton, Ohio named after him.

The first "attorney of the district" for the United States was Richard Stockton, son of "Stockton the Signer", and his first appearance was at the August term, 1790 (probably Judge Brearley's last attendance before his death).

One Henry Guest had petitioned the court for relief from the payment of duties claimed by the collector of "the Eastern District of this State" on certain shoes and leather aboard the ship of Capt. Edward Yard. Mr. Stockton responded to the order to show cause by saying that (1) as to the relief sought from any fine, penalty or forfeiture, he showed no cause but submitted on the facts recited in the petition, and (2) so far as the party sought relief from the customs duty on shoes and leather, the judge of the District Court had no jurisdiction. The petition was divided; Judge Brearley referred the request for relief from any fine, penalty or forfeiture to the Secretary of the Treasury, and dismissed the prayer for relief against payment of the customs duty.

That first litigated matter set the tone: the District Court is of limited jurisdiction and matters outside it must be dismissed.

It was so in the beginning, and has been so ever since. "Case Dismissed for Lack of Jurisdiction."

NOTES FROM THE ARCHIVES

By Susan Tobin

Work on the Court's records is progressing, and I hope to have a preliminary inventory ready shortly. The inventory will indicate which original records still exist and which records are on microfilm, and where research on both originals and microfilm can be done.

It is by pure chance that some of the District Court's original early records still exist: they were very fortunately lost a few years ago when nearly all original early Circuit Court records and some other early District Court records were microfilmed and then destroyed. These early District Court records were found several years after the microfilming in a state of total disarray in the basement of the Trenton Courthouse.

The early records can be divided chronologically into two parts—those dating from the late 1810's through the 1850's, and those dating from the 1860's through the 1880's. Before the 1860's the Court did relatively little work, and there was no need for a sophisticated filing system. During the 1860's and particularly after the Civil War, the work of the District Court expanded enormously, and this expansion is reflected in the organization of the records.

Before the 1860's the cases were not numbered, nor apparently were they divided for filing purposes according to whether they were Admiralty, Law, or Equity cases. During the 1860's all this changed. The increasing volume of cases necessitated setting up a more efficient method of filing, and it is fascinating to see how this was worked out in the 1860's and 1870's. Deciphering the system from the jumbled documents took time as it was not immediately clear whether the numbers on the documents were case numbers, docket numbers, or page numbers.

CONFESSIONS OF RONA BARRISTER

The Historical Society was formed to chronicle the history of the Federal Court in New Jersey. His-

tory is not another word for dull and the purpose of this column is to prove it. We encourage and solicit all members for interesting tidbits that will titillate and enthrall our readers. In the interest of discretion, we will not accept items regarding the living. We caution you to remember, however, that YOU are history in the making.

—Did you know that the federal court in 1887 was no different from the federal court today? As reported in the March 29, 1887 issue of a popular Trenton newspaper, the "United States Circuit Court was engaged all of yesterday afternoon in hearing a will suit of no general interest."

—Did you know that there is an unconfirmed report that a member of the Biddle family was a claimant in the first federal jury trial in New Jersey in 1791 for goods seized by a Customs Collector? In that case, Biddle prevailed and the goods were found not to have been forfeited. Some things stay the same.

—At least in 1797 failure to appear in court due to sickness was an acceptable excuse. United States Marshal Thomas Lowry was excused from paying a \$12.50 fine for the failure of one of his Deputy Marshals to appear in Court due to sickness.

COMING EVENTS

—The first Annual Banquet of the Historical Society will be (on October 8, 1987) at the Hyatt Regency in New Brunswick.

—A reception at the annual meeting of the New Jersey State Bar Association in Atlantic City will be held at Bally's Park Place in the Monticello room on Friday, May 15, 1987 at 6:00 p.m. All are invited!

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