

NUNC PRO TUNC



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

LETTER FROM THE PRESIDENT

In our first year, we are off to a good start. We do have about 250 members. Only five people, unfortunately, are enrolled as lifetime members, each having contributed \$1,000. We need more lifers. We also need more work from our committees.

One of our active committees has been the group compiling oral histories from some senior practitioners. Joan Foster, who is heading the project, reports that the use of video and audio tapes for the interviews is enabling her and her group to record Court events dating back to pre-World War II. Her goal is to edit the data into booklet form to be added to the existing historical data covering, to some extent, the Court's earlier years. The final product will be a complete book history of our beloved Federal Court.

The Banquet Committee, headed by Bill Walsh and Joe Markowitz, hosted a highly successful reception in May in Atlantic City during the State Bar Association convention. Over 100 guests enjoyed a visual display recounting the lives of the first eight Judges.

On October 8 at the Hyatt Regency Hotel in New Brunswick, the Society's First Annual Banquet will be held. The evening is planned as a celebration honoring Chief Judge Gibbons and former Chief Judge Fisher. Chief Judge designate Gerry will be the Master of Ceremonies. All of our Federal Judges and Magistrates will be participating in the fun.

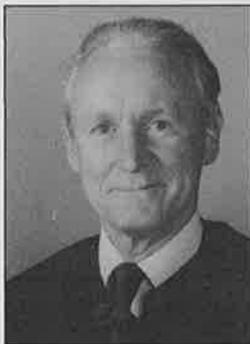
There is still much work to be done. Although we have made good progress, we need more actively participating members if our Society is to succeed.

Donald A. Robinson
President

SOCIETY TO HOLD BANQUET

The first Annual Banquet of the Historical Society will be held at the Hyatt Regency in New Brunswick on October 8, 1987. The affair will begin at 5:30 for cocktails and continue at 7:00 with a dinner dance. The cost is \$75.00 per person.

The Honorable John F. Gerry will serve as the Master of Ceremonies. The main speaker will be the Honorable John J. Gibbons, Chief Judge of the Third Cir-



Honorable John J. Gibbons

cuit. Chief Judge Gibbons and the Honorable Clarkson S. Fisher, who is resigning as Chief Judge of the District effective September 30, 1987, will be honored at the event. There also will be two surprise presentations.

Many judges from the Circuit, District and Bankruptcy Courts will be attending as well as many of the magistrates. The Society is looking forward to this being a successful and exciting event.

All interested in attending should remit their check to William T. Walsh, Clerk, U.S. District Court.

JUDGE FISHER RESIGNS AS CHIEF JUDGE

The Honorable Clarkson S. Fisher of the United States District Court for the District of New Jersey informed President Reagan that he would take senior status as of October 1, 1987. His distinguished service for over 8½ years as Chief Judge for the District of New Jersey is the longest tenure in the modern history of the United States District Court for the District of New Jersey.

He was born in Long Branch, New Jersey on July 8, 1921. After graduating from Long Branch High School and St. Benedict's Preparatory School, Newark, he matriculated at the University of Notre Dame. His studies at Notre Dame were interrupted by service in the Pacific Theatre in the United States Army in World War II. After his Honorable Discharge from the Army, he resumed his studies at Notre Dame, and graduated in 1948. He received his Bachelor of Law degree from Notre Dame Law School in 1950, and was admitted to the Bar of New Jersey the following year.

Judge Fisher practiced law in Long Branch, New Jersey from 1951 to 1964. He served on the Council of the Borough of West Long Branch and in 1963 was elected from Monmouth County to the New Jersey State Assembly. In September, 1964, Governor Richard J. Hughes appointed Judge Fisher to the Monmouth County Court, and in 1966, Judge Fisher was appointed to the Superior Court of New Jersey.

On October 16, 1970, Judge Fisher was sworn in as a Judge of the United States District Court for the District of New Jersey. Upon the untimely death of the late Judge George H. Barlow on March 4,

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RECOLLECTIONS

WARNING TO LAWYERS:

Don't Give Unnecessary
Advice to a Judge
By Donald A. Robinson

Judge Thomas F. Meaney served on the bench from July 3, 1942 until May 17, 1968. He wore a monocle, used a pearl-studded cane and burned incense in his Chambers. Every summer this urbane jurist disappeared the last day of June until the day after Labor Day. He traveled in Europe every summer, all summer. He also had a sense of humor. Here is what happened one motion day in his courtroom.

Counsel for the government, while arguing in support of a summary judgment, mentioned to the Court that his adversary was relying on a dissenting opinion having no binding effect on Judge Meaney. With that, the Judge, who also affected a pince nez, peered down at counsel and shouted: "Teach your grandmother to suck eggs." "What was that, Your Honor?" asked counsel. "Teach your grandmother to suck eggs."

The puzzled Assistant United States Attorney, now Judge Raymond W. Young, sitting in the Superior Court, Hudson County, despite having earned a doctorate in philosophy and having been a distinguished professor at several colleges for a number of years, wisely decided to go onto another topic. Later, however, through the mist of the smoking incense when he spoke with Judge Meaney in Chambers, he learned that His Honor was quoting a 17th Century English expression meaning "Don't tell me the obvious."

MEMOIRS COMMITTEE REPORT

M. Joan Foster

The Memoirs Committee has undertaken an oral history project which involves obtaining the oral histories of those individuals whose contributions to and experiences in federal practice make their recollections and stories vital to developing and preserving the history of the United States District Court, District of New Jersey.

Already, 17 past and present Federal Court judges have agreed to be interviewed, including Justice William J. Brennan, Jr. Another nine current and former members of the Bar who have achieved pre-eminence in their fields have agreed to be interviewed. The interviewers include 22 members of the Federal Bar including several current federal judges.

A seminar for interviewers was held on June 22, 1987, which was presided over by Perry Blatz, the former Director of the Oral History Project of the New Jersey Historical Society. Potential interviewers were instructed and educated on the pur-



The Current Courthouse Building in Trenton under construction in 1932.

pose and procedure of obtaining oral histories. The session was videotaped and is available for anyone who missed the meeting.

The initial objective of the oral history project is to obtain recollections in recorded and written (transcript) form. Thereafter, the Committee hopes to obtain the services of a librarian to reference and cross-reference the data collected so that it will be accessible to others, whether they be writers, historians or other attorneys and judges. The information gathered can also be a primary source of information for programs, lectures and other activities related to the Federal District Court and the Historical Society. The main point, of course, is that once the information is recorded, it will be available for posterity, to be used to enlighten and educate future generations.

The enthusiastic response and participation of so many judges and practitioners bodes well for the success of the project. Interviews are taking place cur-

rently and should be completed by the next meeting of the Memoirs Committee on October 19, 1987.

SOCIETY HOLDS RECEPTION AT STATE BAR MEETING

The Society held a reception at the annual meeting of the New Jersey State Bar Association in Atlantic City at Bally's Park Place.

The purpose of the reception was to publicize the efforts and activities of the Society and to recruit new members. The reception was a great success with well over 200 people attending. In attendance at the reception were: Honorable John J. Gibbons of Third Circuit Court of Appeals, Honorable Clarkson S. Fisher of the District Court, Senior Judge Mitchell H. Cohen, District Judge John F. Gerry, District Judge Stanley S. Brotman, District Judge Harold A. Ackerman, District Judge John S. Bissell, District Judge Joseph H. Rodriguez, District Judge Robert E. Cowen, Bankruptcy Judge William H. Gindin, Bankruptcy Judge William F. Tuohey, Magistrate Jerome B. Simandle and Magistrate Freda Wolfson.

There was also an exhibition entitled "The Court's First Hundred Years, 1789-1889". The exhibition was prepared by Susan Tobin, an archivist working with the Society. Shown in the exhibition were portraits and brief biographies of the Court's first eight judges—starting with David Brearley, who was appointed by George Washington in 1789, and ending with John Thompson Nixon, who died in 1889—and copies of documents from the Court's records for those years. In between David Brearley, who died in 1790, and John Thompson Nixon, who was appointed by President Ulysses S. Grant in 1870, were Robert Morris, 1790-1815; William Sandford Pennington, 1815-1826; William Rossell, 1826-1840; Mahlon Dickerson, 1840-1841; Philemon Dickerson, 1841-1862; and Richard Stockton Field, 1863-1870.

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PROFILE

Honorable David Brearley
(1745–1790)

Hon. Vincent P. Biunno

The first Judge of the United States District Court for the District of New Jersey was the Honorable David Brearley,¹ who was appointed by George Washington on September 26, 1789. He was entitled to be addressed as "The Honorable" before he took the oath in the federal court because, for the 10 prior years, from 1779 to 1789, he had been Chief Justice of the Supreme Court of New Jersey.

Just think what the courts would have been like if Arthur T. Vanderbilt, Joseph Weintraub, Pierre P. Garow, Richard J. Hughes and Robert Wilentz had resigned as Chief Justice to become a U.S. District Judge in the District of New Jersey!

In those early days, the district Judge sat in two federal trial courts: the U.S. District Court, and (along with one or two Supreme Court justices riding circuit) in the U.S. Circuit Court for the New Jersey District.

Eventually, in 1911, the trial branch of the U.S. Circuit Court was separated from the appellate function, and merged with today's U.S. District Court, which thus has two lines of ancestors, in both of which the U.S. District judge sat.

There was good reason for that structure in the trial courts because the 1789 Judiciary Act required that the law of the district, both substantive and procedural, should apply in the federal trial courts. Although the Supreme Court justices were able jurists, when they rode circuit they needed the local district judge to inform them of local law and procedure.²

Judge Brearley was born at Spring Grove, N.J., said to be near Trenton, on June 11, 1745, descended from a family emigrated from Yorkshire in England. He studied for the law, was admitted to the bar in 1767, and began practice at Allentown in Monmouth County. He later, in 1781, was awarded an honorary Master of Arts Degree from Princeton, then known as the College of New Jersey.

He was a member of the de facto provincial congress that declared New Jersey independent and adopted a Constitution on July 2, 1776. David Brearley was an outspoken whig and, as a result of his activities at the first constitutional convention in 1781, was arrested for treason, but was freed by a group of patriots. He served as a lieutenant-colonel of the 4th New Jersey and the 1st New Jersey during the Revolution.

He resigned his commission on August 4, 1779 to take up his duties as Chief Justice of the Supreme Court, to which he was elected on June 10, 1779. He held

this position until 1789 when he became the first judge of the United States District Court for New Jersey.

One of the first cases that he heard and decided while on the state court bench was the case of *Holmes v. Watson*, in which Watson had obtained a favorable verdict sat by a jury of six in accordance with a recently enacted state law. Chief Justice Brearley granted a writ of certiorari, and the case was argued on November 11, 1779. On September 7, 1780, he ruled that the statute contravened the provision of the 1776 New Jersey Constitution preserving the right of trial by jury, and set the judgment aside. Edward B.



Honorable David Brearley

Keasbey, in his "Courts and Lawyers of New Jersey" (Lewis, N.Y., 1912), at Vol II, p. 683-84, claims that this is the earliest instance of a judicial decision ruling that a statute was unconstitutional, preceding a Rhode Island case of 1786 and a North Carolina case of 1787, involving a like issue.³ It is thought that his decision set a precedent for the development of this doctrine by John Marshall, the Chief Justice of the United States Supreme Court.

While serving as Chief Justice, David Brearley was chosen as a delegate to the 1787 Constitutional Convention, along with William Churchill Houston,⁴ the Clerk of the Supreme Court, William Paterson, Esq., then the Attorney General, and John Neilson.

William Paterson, a supporter of the rights of the small states, in close collaboration with Brearley, (who compiled population figures and calculated the number of representatives under various proposals), devised, submitted and argued the New Jersey plan which, although rejected as submitted, became the selection for the Connecticut Compromise in which each State has an equal vote in the U.S. Senate.

Paterson could not stay throughout but Brearley carried on at all the sessions and was known for his regular attendance. Some of his papers fill gaps of the record

in Paterson's papers, and exist due to the prudence of Joseph Bloomfield, his executor.

Brearley also carried the burden of leading the discussion at the N.J. Convention to consider ratification. He was the only person who was a delegate to both the New Jersey Ratifying Convention and the Constitutional Convention in Philadelphia. In 1788 he was chosen as a presidential elector.

He was in poor health after the 1787 Convention; the minute book of the District Court recites that his indisposition required that he adjourn the opening session set for the first Tuesday of November, 1789, and that it was carried to November 24th. He again was obligated to adjourn the opening term to December 22, 1789, and that is when it all began.

David Brearley served until his death, less than 8 months later, on August 16, 1790, leaving a rich heritage for those who have followed him.

¹ Many biographies and history books spell his name as Brearly, but there can be no doubt that he spelled it Brearley. First of all, it is so spelled in every place that it appears in the minute books of the District and Circuit Courts. Second, while he was Chief Justice, he had to sign the paper money issued by New Jersey, and a reproduction of one of those bills shows, in his bold handwriting, "BREARLEY." See G.W. Wait, "New Jersey's Money" at 26 (Newark Museum, 1976).

² At the October Term, 1790, a rule was adopted that: Ordered that the general course of practice in the Supreme Court of New Jersey shall in all cases in which that course is applicable, be the rule of practice in this court. (Minute Book, P. 4).

³ The *Holmes v. Watson* opinion was probably oral and was not published, but the case file is in Supreme Court Envelope 44928, and records of the General Assembly of December 8, 1789 note a petition making mention of the ruling. The case is also referred to by Chief Justice Kirkpatrick in *State v. Parkhurst*, 4 Halsted 444.

⁴ A professor at the College of New Jersey, Houston served as deputy secretary to the Continental Congress and was active in the militia around Princeton. He attended the Annapolis Convention in 1786 and the 1787 Convention in Philadelphia but illness prevented his attendance after June 6, 1787.

MEMBERSHIP REPORT

At last count, we had 250 members and still hope to expand our membership ranks. Thus far we have five lifetime members whose contributions have greatly aided the filling of our ever-emptying coffers. Our special thanks, therefore, are extended to Vincent P. Biunno, Charles Danzig, Patrick McGagn, Jr., Donald A. Robinson, William Tompkins.

Not only do we need funds, but we also need working members. We encourage all of our current members to actively participate on our committees. We also encourage our members to solicit their colleagues, friends and other interested persons to join our effort to preserve our important part of our history.



Honorable Clarkson S. Fisher

(Continued from page 1)

1979, Judge Fisher succeeded to the Office of Chief Judge, where he served until he took senior status on October 1, 1987.

Judge Fisher's accomplishments during his tenure as Chief Judge have had a tremendous impact on the development of the District Court in New Jersey and will be long remembered. For example, Judge Fisher was the driving force behind the new \$40 million complex that will house the District Court in Newark as well as the new District Court annex in Camden. He also made great strides in streamlining and modernizing the operations of the Court administratively and procedurally by bringing automation to the Court and by initiating the formation of the Lawyers' Advisory Committee which, along with Judge Fisher, revised the local rules for the District Court. He also has eased the handling of the ever increasing caseload in the district by being an instrumental and successful supporter of bringing, not only more judges, but more bankruptcy judges and magistrates to the district. His many other contributions to the Court are too numerous to describe, but one last contribution must be mentioned. It was Judge Fisher who initiated the formation of the

Historical Society and who has been a major force behind its successful first year of operation.

Judge Fisher has long been active in matters of judicial administration and, before entering the judiciary, in civic, charitable and religious activities. He has long served as a trustee of his parish, St. Michael's Roman Catholic Church, Long Branch, New Jersey. He has earned the respect and admiration of the lawyers and the people of New Jersey. Judge Fisher has the best wishes of every judge and lawyer in the Federal Court, and his many friends, for a long and happy career as a Senior District Judge.

NOTES FROM THE ARCHIVES

By Susan Tobin

The Court's records are part of the National Archives, and are open to the public at the National Archives—New York Branch, Bayonne, N.J. (Building 22, Military Ocean Terminal, Bayonne, N.J. 07002-5388; 201-823-7252). A finding aid or inventory to the Court's archives is being prepared and will be a permanent guide to the Court's records. It will indicate in some detail which records still exist—either in paper form, or on microfilm—and which of these records are of particular interest. In addition, the finding aid will try—by comparison with finding aids to the New York and Pennsylvania Federal District Courts—to show which New Jersey records no longer exist.

Among the records in the Archives at Bayonne are the District court Minutes from 1789 to 1950; Admiralty records (dockets and transcripts of testimony); bankruptcy records (dockets, case files, and transcripts of testimony); criminal records (dockets, some case files and tran-

scripts of testimony), and naturalization records (naturalization petitions and related records 1838-1906). Also at Bayonne are records of the former circuit court. These include the minutes from 1790 to 1911; dockets, 1862-1911 (on microfilm), and some law and equity records, 1849-1916 (transcripts of testimony, depositions, exhibits and related records). The Court's more recent records, dating from 1950, also are located in Bayonne.

Some of the microfilm records are also available for research at the Court Library in Newark, and in the Clerk's Office at Trenton. The Court's original early documents are at Trenton.

Also helpful to anyone doing research on the Court's history are various secondary sources such as: "The Constitution and Government of the Province and State of New Jersey, and Reminiscences of the Bench and Bar" (Elmer's Reminiscences) by Lucius Q.C. Elmer, 1872; "The Judicial and Civil History of New Jersey" by John Whitehead, 1897; and "Courts and Lawyers of New Jersey" (3 vols.) by Edward Q. Keasbey, 1912. Local libraries and Historical Societies also are good sources.

For further information on the Archives, please contact Susan Tobin, Archivist, Clerk's Office, United States District Court, 402 E. State Street, Trenton, N.J. 08603 (609) 989-2065.

NAME THAT NEWSLETTER CONTEST

We want to thank everyone for their suggestions for a name for our newsletter. We particularly want to thank the Honorable Vincent P. Buinno for contributing the winning name—"Nunc Pro Tunc".

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

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