

NUNC PRO TUNC



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

LETTER FROM THE PRESIDENT

Our first year has been successful historically, socially and financially.

Historically, three major projects are progressing. The oral histories, thanks to Joan Foster, are almost completed. We will soon be deciding the most effective use of those video tapes. There will be a preview at our next banquet on October 13. Our second project is the essay contest. Judge Bissell reports that there are numerous entries and more are expected. Third, we are developing a written volume of the history of the Court. We are preparing our outline based on the ancient documents that we have discovered at various locations throughout the State. Our goal is to have the book completed for a December, 1989 publication to coincide with the 200th Anniversary of our Court.

Socially, too, we are doing fine. The Markowitz Mixer will be on Friday, May 13, in the Monticello Room, Bally's Park Place Casino Hotel in Atlantic City as part of the NJSBA meeting. There will again this year be an exhibit. The second annual banquet is on October 13, at the Hyatt, New Brunswick. Chief Judge Gerry will be our master of ceremonies. The program will have fewer speakers and more time for the Federal family to enjoy being together.

Financially, our 258 members, including five life-time members, have given us a solvent treasury.

Donald A. Robinson
President

HON. JOHN F. GERRY CHIEF JUDGE



On October 1, 1987 Honorable John F. Gerry became the new Chief Judge of the United States District Court for the District of New Jersey. He succeeded Chief Judge Clarkson S. Fisher who took senior status on September 30, 1987.

Judge Gerry was appointed United States District Judge for the District of New Jersey on December 20, 1974 and entered on duty January 9, 1975. He is a graduate of Princeton University, receiving an A.B. degree in 1950, and Harvard Law School, receiving an LL.B. degree in 1953. During World War II he served as a Corporal in the United States Air Force, 1944-1946.

Judge Gerry is married to the former Jean Ann Elbersen and has three daughters: Patricia, Kathleen and Ellen.

We know that Chief Judge Gerry will provide us with many years of progressive leadership.

BICENTENNIAL ESSAY COMPETITION

The Historical Society of the U.S. District Court for the District of New Jersey is sponsoring an essay competition to commemorate the 200th anniversary of the Court's first sitting.

The competition is being 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 professional law students
3. Open (e.g. lawyers, news reporters, historians, or any interested individual.)

The topic of each essay must be germane to the history of federal trial courts (including bankruptcy) in the District of New Jersey, or their personnel, from 1789 to the 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. So far, 72 people have requested applications. There still is time, however. If you are interested in participating you should write to: Essay Program, District Court Historical Society, P.O. Box 419, Newark, N.J. 07102, for a copy of the competition rules and other material.

PROFILE

HONORABLE ROBERT MORRIS

HON. VINCENT P. BIUNNO

The second judge to be named to the U.S. District Court for the District of New Jersey was Robert Morris. The last appearance of David Brearley, the first District Court judge, before his untimely death, was at the August term, 1790. The commission of Robert Morris was read at the opening of the next term, in November 1790. At that time, Andrew Kirkpatrick, Esq., was named as Clerk in place of Jonathan Dayton.

Judge Morris sat in the District and Circuit Courts until sometime in late 1814 or early 1815, and died June 2, 1815. Like David Brearley, Robert Morris had been Chief Justice of the Supreme Court of New Jersey and, in fact, was the first Chief Justice named by the Legislature under the 1776 Constitution. The Legislature had tendered the appointment to Richard Stockton, and then to John De Hart, who each declined it, and it then fell to Robert Morris to formulate the rules for the Supreme Court and to organize the county courts of common pleas, and the court of oyer and terminer.

He resigned from his post as Chief Justice after two years, in June, 1779, in part no doubt due to the difficulties of travelling to all the counties to hold court, and of working with inexperienced officers and associate justices who were not trained in the law, but who were farmers, doctors and shopkeepers.

Robert Morris had an unusual family background for his service as Chief Justice. His grandfather, Lewis Morris (1671-1746), had served as a member of the Council, and as a judge of the Court of Common Right in Monmouth County where he lived at Tintern Manor. He later moved to New York, where he served as a Justice of the Supreme Court and, in 1738, was named Royal Governor of New Jersey.

While he was Governor, Lewis Morris appointed his son, Robert Hunter Morris, (father of Robert Morris) as Chief Justice of the Supreme Court of New Jersey, to serve "during good behavior." Not having a fixed term of office, he retained his commission from 1739 until his death in 1764, with several interludes, during one of which (1754-1756) he served as Royal Governor of Pennsylvania. Robert

Hunter Morris is said to have never married, but to have had "at least three natural children", one of whom was Judge Robert Morris. See, Encyclopedia of American Biography.

Two references to Judge Robert Morris are found in early published opinions. One is in the first reported opinion of the United States Court for the Third Circuit under the Midnight Judges' Act. That case is Hammond's Lessee v. Haws, Wallace's Circuit Court Reports (1801) at 1. The suit was evidently an ejectionment, or trespass to try title, and had been filed sometime before the October Term, 1795, when issue was joined. Plaintiff did not move the case for trial and, at the October Term, 1800,



Robert Morris, District Judge
August 28, 1790 - May 2, 1815

defendant secured a rule directing that plaintiff proceed to trial at the next term or else suffer non pros. The rule was heard at the May Term, 1801 and Rawle, for plaintiff, asked for a continuance, presenting reasons why he was not ready to proceed. One of these reasons was that plaintiff's lessors "were in England, and managed their concerns by Mr. Morris of New-Jersey as their attorney in fact, who since October last, had been so pressed by his private associations and professional duties in his office of Judge of the District Court of the United States, as to have rendered his attention to the preparation of the cause impracticable."

The other case was Committee of the West Jersey Society v. Robert Morris, reported in 1 Peters 3rd Circuit Court Reports 58 (Apr. Term 1812, at Trenton). This was an equity suit for an accounting by Robert Morris "who was the agent for the complainants, for managing their estates in New Jersey and Pennsylvania; and collecting their debts and rents, and selling their lands in those States, from 1784 to 1802." The only item in dispute was the compensation of the agent, an issue decided by Justice Washington for the court (the opinion noting "Morris absent"). The

circuit minutes for April 6, 1812, carry an entry of more than three pages, possibly being Justice Washington's oral ruling, later elaborated on in the published opinion.

These two reports make it clear that the work on the District and Circuit Courts did not occupy Judge Morris full time and that he continued to engage in private activities at least by way of serving as attorney in fact for the management of real estate.

Except for such decisions as appear in the minute books of the district and circuit courts, opinions of Judge Morris have not so far been found. The earliest published opinions of the circuit court so far found (where the district judge sat with a justice) are for the April Term, 1803 at Trenton, from which time Justice Washington sat with Judge Morris. Those opinions as have been found for the New Jersey District in Peters' 3rd Circuit Court Reports are given for the court by Justice Washington.

One exception found is in the case of Beach, Executor of Richards v. Woodhull, 1 Peters 2 (Apr. 1803). The suit was to foreclose a mortgage on real estate that had passed to one who had been convicted of treason and attainted, as a result of which his property had been sold to the defendant by the commissioners of forfeited estates. Justice Washington ruled that an Act passed in 1783 barred foreclosure of mortgages on forfeited property by limiting recovery to a claim filed with the commissioners. Judge Morris disagreed, expressing the view that the case was exactly like one decided in New Jersey District by Justice Chase (who, the minutes show, sat at the April Term, 1798) in which foreclosure had been allowed. The report closes with the note that: "The court being divided, a case was stated for the Supreme Court, but no removal to that court took place."

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Editors

Ann G. McCormick
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HISTORICAL SOCIETY FIRST ANNUAL BANQUET



SOCIETY HOLDS FIRST ANNUAL BANQUET

The first Annual Banquet of the Historical Society was held at the Hyatt Regency on October 8, 1987. The evening was a huge success, with over 500 people in attendance. The Honorable John F. Gerry (our new Chief Judge of the District) served as the quick-witted and humorous Master of Ceremonies who, incidentally, due to popular demand, has agreed to serve as the Master of Ceremonies at the second Annual Banquet on October 13, 1988.

Honored at the Banquet were the Honorable Clarkson S. Fisher, the Honorable Leonard I. Garth, the Honorable James Hunter, III and the Honorable John J. Gibbons who also was the main speaker. As can be gleaned from the following excerpts from the speech given by Judge Gibbons, the Historical Society of the District Court serves an important function collecting and memorializing firsthand reports of our history, not only as it relates to our court system but also as it relates to the history of our country. Despite the serious purpose of the Historical Society, fun was had by all as the pictures from the Banquet on the next page will attest.

Excerpts from Chief Judge Gibbons' Speech:

It is both an honor and a pleasure to welcome all of you, on behalf of the Court of Appeals, to this First Annual Dinner of the Historical Society of the United States District Court for the District of New Jersey. Your attendance here, in such large numbers, attests to the fact that the bar of our state is ready and willing to support the work of the Society, which, as I see it, involves two aspects. The first is increased awareness by the bar and the public of the significance of the Article III Courts in the life of our state and our nation. The second, which will undoubtedly contribute to the first, is increased availability to historians -- both legal historians and generalists -- of the great treasure trove of historically significant documents stored, and largely overlooked, in the records of the district court.

Traditionally academic historians have ignored court records as sources for historical research. Perhaps this has been because court records, created by lawyers, have been deemed to be incomprehensible to historians not trained in the law. Perhaps it has been because of a

lack of awareness of what marvelous materials lurk in those records waiting to be explored. Perhaps it has been because the manner in which court records are indexed and stored has made their retrieval difficult and expensive. Still, it seems odd that historians regularly scan old newspapers stored in libraries for hearsay accounts of significant events, while ignoring the testimony under oath of participants in those same events stored in courthouses down the street.

To some extent this neglect has been rectified in recent years as our law schools have begun to pay more attention to legal history, and have brought into their faculties lawyers trained in the academic discipline of history. Cer-



Chief Judge Gibbons, Judge Cowen,
Mrs. Cowen

tainly that is all to the good, for the uses to which lawyers have put history have often left much to be desired. On both sides of the current debate over the confirmation of Judge Bork, for example, viewers of C-Span have been exposed by lawyer members of the Senate, and by witnesses, to lots of bad history, as well as a fair amount of poor constitutional law. Possibly the whole process would have been more illuminating if all the participants were more aware of the way in which the federal courts below the level of the Supreme Court actually functioned from day to day. A layman, listening to the Bork hearings might be excused if he came away with the impression that all the Article III judges deal with is constitutional law. In fact, of course, the grist for the district court mills is more pedestrian, although no less important. It is to these courts that the national government has had to turn for the enforcement of its legislative policy judgments. In the records of these courts can be found the record of

successes and failures of those policies. And what a mass of material waits to be explored! Let me mention just a few areas that come immediately to mind.

Don Robinson spoke recently about the fact that the great Daniel Webster, in 1852, tried, against the great Joseph Choate, the patent case involving the process for vulcanization of rubber. What was the relationship between that case and the century long association of the City of Trenton with the rubber manufacturing industry? How did the case influence the economic development of Central New Jersey? I note with great anticipation that an exploration of that great battle between the giants of the mid-nineteenth century bar is one of the projects the Society has undertaken. Many more projects await such explanation, in areas of federal court subject matter jurisdiction other than that of patent law.

. . .

My suggestion that historical patterns such as that of the Volstead Act and the Selective Service Act enforcement are worthy of study does not imply that individual case records are not of themselves worthy of detailed examination. Many of these are of preeminent historical importance. One that comes to mind is the great 1938 case of Hague v. C.I.O. What a cast of characters! It included the so-called "red" Congressman, Vito Marcantonio, Harry Bridges, head of the Seafarers Union, Senator William E. Borah, Roger Baldwin, founder of the American Civil Liberties Union, Norman Thomas, Socialist Party Candidate for President, and Frank Hague, Mayor of Jersey City and Vice President of the Democratic National Committee. It was the seminal Civil Rights Case of this Century, for it was the first case to revive the Civil Rights Act of 1870 from its half century slumber. The lawyers included

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COMING EVENTS

- The Markowitz Mixer will be at the annual meeting of the New Jersey State Bar Association in the Monticello Room at Bally's Park Place Casino Hotel in Atlantic City on Friday, May 13, 1988 from 6:00-7:00 p.m. All are invited!

- The second Annual Banquet of the Historical Society will be on October 13, 1988 at the Hyatt Regency in New Brunswick.

(Continued from page 3)

Morris Ernst, defender of James Joyce's "Ulysses," and Arthur T. Vanderbilt, ABA President and Republican Boss. Presiding over it was the quintessential independent Article III judge, William Clark. A millionaire, a Democrat, and a personal friend of Franklin D. Roosevelt, Clark presided at the trial day by day while awaiting a call telling him whether his friend would elevate him to the Court of Appeals. Before the call came, he decided to apply the long moribund Civil Rights Act against the nation's most powerful Democratic political boss. He was elevated anyway. Clark's judicial career is alone worth studying. But in the record of the great case over which he presided some historian will, I am sure, find a wealth of valuable information about the political and social climate of this state in the 1930s.

...

The enthusiasm demonstrated by your attendance here tonight bodes well for the success of the Society. It is off to a good start, and it will soon, we can be sure, enliven and enlighten the bar and the public of our state by providing support for explorations such as I have mentioned. For that we can all be grateful. And you can all be grateful that I won't talk any longer.

CASE NOTES

The Abner Reeder Case

By Susan Tobin

One of the most interesting cases of the 1820s was Postmaster General vs. Reeder. The case -- an action of debt brought against Abner Reeder as one of the sureties for Charles Rice, Postmaster in Trenton from 1803 to 1824 -- is interesting not only because of the legal issues involved (the case went on Writ of Error from the District to the Circuit Court) but also because both Reeder himself and the attorneys on both sides were prominent men. Among the attorneys associated with the case were Lucius Q.C. Elmer, Richard Stockton, Lucius H. Stockton, Garret D. Wall, Samuel L. Southard, and Joseph McIlvaine. With the exception of Samuel Southard, all were at one time U.S. Attorney, Joseph McIlvaine and Lucius Q.C. Elmer during the Reeder case, the two Stocktons before the case, and Wall after. Furthermore,

Southard was very briefly Governor of New Jersey.

Abner Reeder was a well-known silversmith, whose work is still on display in museums. Reeder became prosperous and took an active part in the life of Trenton. He was born on October 10, 1766, just north of Trenton in what is now part of Ewing Township. Both his parents were members of families which had settled early in that area. After some time spent away in Philadelphia where he was apprenticed to a silversmith, Reeder became a partner in McFee & Reeder, Silversmiths, and married Hannah Wilkinson, daughter of a prominent Pennsylvanian. Reeder returned to the area and lived in a house belonging to his family which is still standing, and which is known as the Abner Reeder House. (The house is on Bear Tavern Road in Ewing, but it is not open to the public.)

Reeder's return to Trenton in the summer of 1798 had been intended as a temporary escape from a serious yellow fever epidemic in Philadelphia, but apparently he found Trenton congenial and remained there for the rest of his life. He established his business on Second Street where, according to his advertisement in the April 22, 1799 issue of the New Jersey Gazette, he had for sale "a very neat assortment of Silverware, Jewelry, English Watches, Plate Candlesticks, and a great variety of other articles." In 1804 Reeder was designated as one of the Commissioners of the newly chartered Trenton Banking Company and, in 1824, he participated in planning the city's reception for Lafayette, who was touring the country. Abner Reeder died on October 25, 1841.

The case against Reeder started in 1821. Charles Rice, against whom suit was also brought, had been appointed Postmaster in Trenton in November 1803 and, through the years, had defaulted on his obligation to pay the Postmaster General. A bond for the amount of \$2,000 had been taken by the Postmaster General from Abner Reeder as surety for Rice on November 28, 1803. The case was a complicated one with one of the key issues being whether the fact that the Postmaster General had failed to bring suit earlier on Reeder's bond for the discharge of Rice's obligation had discharged Reeder as surety from his obligation.

After some delay, there was a hearing at a Special Term of the District Court

held at Trenton on July 6, 1824, under Judge William S. Pennington, where the cause was argued by the District Attorney for the Plaintiff and by Mr. Wall for the Defendant. On September 14, 1824, at a regular session of the Court held at New Brunswick, judgment was given for the Plaintiff, overruling the Defendant's pleas. At another special session of the Court held at Trenton on November 17, 1824, the case was tried before a jury with the District Attorney, Mr. Lucius Q.C. Elmer and Mr. Richard Stockton acting for the Plaintiff and Mr. Garret D. Wall and Mr. Lucius M. Stockton for the Defendant. Evidence for the Defendant was taken and, after the Defendant rested his cause, the Plaintiff demurred to his evidence and the jury was dismissed. No mention of the case is made in 1825. On March 14, 1826, at a session of the Court held in New Brunswick, "The Court having taken time to consider of this case until this day, delivered an opinion in favour [sic] of the Plaintiff." At a session of the Court held in Burlington on May 16, 1826, a "Writ of Inquisition" assessed that the amount owed to the Postmaster General of the United States in this case was \$2,559.63.

The case then went on Writ of Error from the District Court to the Circuit Court. The Minutes for the Circuit Court record that at the October 1827 Session held in Trenton, the Court, presided over by the Hon. Bushrod Washington, and with District Judge William Rossell present, affirmed the District Court's judgment for the Plaintiff.

Lucius Q.C. Elmer, who was District Attorney during the Reeder case, says in his "Reminiscences" that the case "presented a complexity of pleading and issues so singular and so complete", that Judge Pennington took the papers to Philadelphia "to show some of the lawyers there a perfect common law record".

In addition to the entries in the Minute Books of the District Court and the Circuit Court, there are some original documents relating to this case still in existence.

The case, which was originally published in 4th Washington Circuit Court reports from the MSS of Hon. Bushrod Washington is No. 11,311 in Federal Cases.

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**TEST YOUR
BANKRUPTCY I.Q.**

1. Who was the first full-time bankruptcy referee?
2. Who is the boy in the picture?
3. What happened to the rack of jackets and ties available in Courtroom No. 3 on the second floor of the Federal Courthouse in Trenton?
4. What bankruptcy case involved the largest amount of non-existent collateral?



(Answers):

1. You're all right. William Lipkin, Charles Wheelans and William Cahill.
2. William Lipkin, of course.
3. Why do you want to know?
4. In the matter of Tino D'Angellis, involving large drums of salad oil filled primarily with water rather than salad oil.

**THE HISTORICAL SOCIETY OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
MEMBERSHIP RENEWAL APPLICATION FOR 1988**

NAME _____

ADDRESS _____

CITY, STATE, ZIP CODE _____

Please renew my membership in 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

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 U.S.D.C.N.J. c/o William T. Walsh, Clerk, U.S. District Court, DNJ, U.S. Post Office & Courthouse, Newark, NJ 07102. Inquiries may be directed to William T. Walsh (201) 645-6485.

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

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