

NUNC PRO TUNC



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

LETTER FROM THE PRESIDENT

Our first two years has been spent getting organized, identifying historical source materials, planning projects and establishing a membership base.

The Society's officers and trustees continue their hard work and devotion to the Court. In addition to our Annual Trustees' meeting, we have been having periodic Executive Committee meetings. Many projects are in the planning stages. There has been progress.

The Second Annual Banquet on October 13th will have some new features. **The formal program will be short.** During the evening, there will be video segments shown from some of the oral histories that have been collected. Another program highlight will be an award to Judge Biunno whose work on the Court and for the Society has earned him a special place in the Court's history. Also at the banquet, there will be a historical exhibit that the National Archives and Records Administration has helped us set-up.

In December, 1989 our beloved Court will be celebrating its 200th Birthday. Present plans call for the full Court to convene in Trenton for an appropriate commemorative program. We are hoping to have for publication at that time a booklet describing the history of the Court. The sections now under consideration relate to the District Court Judges, Judges, Bankruptcy Judges,

(continued bottom, next column)

SOCIETY TO HOLD BANQUET

The second Annual Banquet of the Historical Society will be held at the Hyatt Regency in New Brunswick, NJ on Thursday, October 13, 1988. Cocktails will begin at 5:30 p.m. with the dinner commencing at 7:00 p.m. The cost is \$75.00 per person.

The Masters of Ceremonies will be William T. Walsh, Clerk, United States District Court, and Liza M. Walsh, an attorney in Roseland. This year there will be two honorees: the Honorable Vincent P. Biunno who has substantially contributed to the success of the Society; and the Honorable Thomas G. Walker, who served on the District Court from December 20, 1939 through December 31, 1941 and who is the oldest living judge of the District Court.

Instead of a main speaker, the program for the evening will include a short and entertaining video excerpt from the interviews that thus far have been conducted as part of the Society's oral history project.

The Society has invited all of the judges of the Circuit, District and Bankruptcy Courts as well as the

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LETTER *(continued from previous column)* Magistrates, United States Attorney's Office, and Clerk's Office, as well as significant cases and statistical facts.

My report is a positive one in that, while there is much to be done, we are on the way toward achieving our goals.

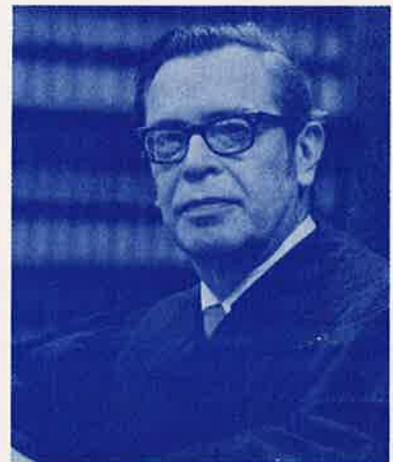
Donald A. Robinson
President

SOCIETY

(continued from previous column)

Magistrates and is looking forward to a successful and exciting event with an attendance in excess of the 500 persons who attended last year.

All interested in attending should remit their check along with the ticket request on the last page of this newsletter to William T. Walsh, Clerk, U.S. District Court.



Honorable Vincent P. Biunno



Honorable Thomas G. Walker

PROFILE

WILLIAM SANDFORD PENNINGTON
(1757-1826)

By Senior District Judge
Vincent P. Biunno

William Sandford Pennington was the third former justice of the Supreme Court of New Jersey to hold the office of a Judge of the United States for the District of New Jersey, following Judges Brearley and Morris.

Judge Pennington was named to the federal bench by President Madison, on January 8, 1815. He served until his death on September 17, 1826. During that time, he sat in the Circuit Court of the United States for New Jersey District with Justice Bushrod Washington, as well as in the District Court.

Judge Pennington was born in Newark, NJ in 1757. He was a direct descendant of Ephriam Pennington, who left England to settle Connecticut sometime before 1643. Ephriam's own son, Ephriam, Jr., was among the first settlers of Newark who came there with Captain Robert Treat. His name appears, along with those of Robert Treat, Michael Tompkins and others, as one of the first settlers of Newark, as "Eph'm Pennington" in the minutes of the Town of Newark for June, 1667.

There is little reference to Judge Pennington's formal education though mention is made of his training as a hatter. All biographers agree that, at the outset of hostilities (probably after Lexington and Concord), he joined the Continental Army. He became a sergeant in the 2nd Regiment of Artillery on March 7, 1777, and was commissioned a lieutenant by General Knox on April 21, 1780 (nunc pro tunc from September 12, 1778). He kept a diary during 1780-1781 while stationed at West Point, the diary having been preserved in the library of the NJ Historical Society in Newark.

His artillery battery is said to have taken part in the siege of Yorktown, and is said to have been present at the execution of Major Andre. He was

sent to Pompton with a detachment to put down a mutiny of troops there, and was later wounded at Yorktown. He was mustered out with the rank of captain by brevet, and took up a mercantile business in Newark.

Judge Pennington's public career began in 1797, when he was elected to the first of three consecutive terms to the General Assembly. His experience there no doubt influenced his decision to read law, which he began about that time in the office of Elias Boudinot, Esq.

While still reading law, he was elected to serve on the legislative Council which, together with the Governor, also served as the court of appeals of last resort in all causes and as a body to grant pardons. This was in 1801.

In 1802 he was re-elected to the council and, in the same year, he was admitted to the bar as an attorney-at-law. In 1803, he was appointed as Essex County Clerk and continued in that office until February, 1804 when he was elected by the Council and Assembly in joint meeting to fill a vacancy on the Supreme Court of New Jersey, created by the death of Justice Chetwood. At that time, Pennington had not yet been an attorney for the three years necessary to qualify as a counsellor-at-law. Lucius Q.C. Elmer, in his "Reminiscences" observes, in this connection, that the Jeffersonian Democrats "had but few lawyers belonging to their party and were obliged to take the best they had or appoint their opposers, — as matters then stood, a thing not to be thought of."

Mr. Pennington must have had favorable qualities that caught the attention of those who were responsible for his rapid advancement, and must have performed his tasks well. Elmer speaks of him as a "strong-minded man and diligent student, [who] was soon accepted as a good judge."

His independence was displayed by his dissent from a decision by Chief Justice Kirkpatrick, who allowed a trial to go over to a later term at great expense to the defendant because his attorney had failed to add a



Hon. William S. Pennington

"similiter" (joining in his adversary's readiness to put the issue to a jury) in his last pleading. This technicality was later cured by statute.

In 1806 he published "A Treatise on the Courts for the Trial of Small Causes, Held by Justices of the Peace, in the State of New Jersey", a work which became a standard reference for many years, being revised and republished twice (after his death) in 1824 and 1843.

Also in 1806, under a statute enacted that year, he was appointed reporter to the Supreme Court, and served in that capacity as well as a justice until 1813. His reports are found in volumes 2 and 3 of the New Jersey Law Reports.

In 1812 his name was put up by the Jeffersonian Democrats for election as Governor by the Council and Assembly, in opposition to Aaron Ogden (of the famous Gibbons v. Ogden litigation), but was defeated. In 1813, and again in 1814, he was elected as Governor, which carried with it in those days service as the Chancellor as well. While his long service on the Supreme Court and the high regard in which the bar held him no doubt equipped him to conduct proceedings in the Court of Chancery, none of his opinions has been published as the cases decided by the Chancellors were not reported until 1830.

Judge Pennington began his service on the federal courts on June 19, 1815. Keasby says that "Lucius Q.C. Elmer was District Attorney most of the time" (during Pennington's service) "and he says no grand jury was summoned in the District Court for

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SOCIETY RECEPTION HELD AT THE STATE BAR MEETING IN ATLANTIC CITY



Hon. Ronald J. Hedges, Hon. Freda L. Wolfson and Hon. Jerome B. Simandle.



Hon. Stanley S. Brotman and Samuel A. Alito, Jr., U.S. Attorney.



Hon. Mary Anne T. Barry, Mrs. Ackerman, Hon. Harold A. Ackerman, Bill Whitlock, Dean Elizabeth DeFeis, John Barry.



Hon. Clarkson S. Fisher and Mrs. Fisher.



Joseph Markowitz and Mary Rose Markowitz.



Pat McCann, Lifetime Member, and Don Robinson, Society President.



Hon. Jerome B. Simandle, William Walsh, Hon. Robert E. Cowen and Richard Collier.



William Walsh, Hon. Clarkson S. Fisher and Hon. Maurice A. Walsh, Jr.

**SOCIETY RECEPTION
HELD AT THE STATE BAR
MEETING IN ATLANTIC CITY**

For the second year in a row, the Society held a reception at the annual meeting of the New Jersey State Bar Association in Atlantic City at Bally's Park Place.

Featured during the reception was a continuation of the exhibition ("The Court's First Hundred Years, 1789-1889") presented during the first reception last year. This year's exhibition was entitled "THE COURT: 1889-1939" and included photographs of the 16 judges of the District Court who were appointed during the years 1889 to 1939*, the last of which was the Honorable Thomas G. Walker, who will be one of the Society's honorees at its Banquet on October 13, 1988. Also part of the exhibit were copies of Court documents and pertinent newspaper clippings from those years as well as a booklet giving a short overview of changes in the Court during that time period.

The reception again was a great success. Included among the attendees were: Honorable Robert E. Cowen of the Third Circuit Court of Appeals, Honorable Clarkson S. Fisher, Senior Judge of the District Court, District Judge Stanley S. Brotman, District Judge Harold A. Ackerman, District Judge Mary Anne T. Barry, District Judge Joseph H. Rodriguez, Bankruptcy Judge William T. Gindin, Magistrate Ronald J. Hedges and Magistrate Freda L. Wolfson.

***Judges Appointed to the United States District Court**

Judge	Years Served
Edward T. Green	1889-1896
Andrew Kirkpatrick	1896-1904
William M. Lanning	1904-1909*
Joseph Cross	1905-1913
John Rellstab	1909-1930
Thomas G. Haight	1914-1919*
J. Warren Davis	1916-1920*

**"IF YOU MUST SWEAR,
DO IT TO THE FOREMAN"**

By Sally Lane

The first federal grand jury to be convened in Trenton's new federal building celebrated the completion



First Grand Jury to Convene in the New Federal Court Building at Trenton

Rear - standing, left to right: Richard J. Galvin, Perth Amboy; Walter F. Clayton, Ocean Grove; Irving D. Butler, New Brunswick, and W. Egbert Thomas, Milford. Center-standing, left to right: William H. Fischer, Phillipsburg; Henry W. Jeffers, Plainsboro; David H. Agans, Three Bridges; Robert H. Gulliver, Trenton; Edward Downs, Jr., Bordentown; J. Roy Martin, Yardville; Rulus D. Renniger, Meluchen, W.

The jury's guests were identified on the menu's cover: Judge Phillip Forman; District Attorney Harlan Besson; Assistant District Attorney T.V. Arrowsmith; District Court Clerk George T. Cranmer; Deputy Clerk B.F. Havens, and Deputy Marshal W.D. Snowden.

A look at one of the famous menus, found in the Trenton Free Public Library's Trentoniana collection, suggests that Prohibition played a large part in the jury's deliberations.

The final note on the menu bears repeating today: "If you must swear, do it to the Foreman."

JUDGES APPOINTED

(continued from previous column)

Charles F. Lynch	1919-1925
Joseph L. Bodine	1920-1929
William N. Runyon	1923-1931
James W. McCarthy	1928-1929
William Clark	1925-1938*
Guy L. Fake	1929-1951
John Boyd Avis	1929-1944
Phillip Forman	1932-1959*
Thomas Glynn Walker	1939-1941

* Went to the Court of Appeals

of its service with a luncheon on November 6, 1933 at the Trenton Country Club.

Each of the printed menus for the luncheon included a glossy print of the grand jury's group photograph.

Edward Denise, Red Bank; Charles H. Fellerley, Bound Brook; Harry Hopkins, New Egypt; James M. Cunningham, Burlington, and William Perkins, Kingston. Seated - left to right: Frank Carlwright, Trenton; Judson Kerr, Frenchtown; Frederic Barlow, Trenton; John J. Cleary, foreman, Trenton; William D. Scisco, Asbury Park, George A. Dalrymple, Carteret, and C.M. Davison, Jamesburg.

Menu

Fruit Cup

with smuggled D'Orsay

Celery
from the still-ey Pines

GHERKINS
with briny Monmouth Co. flavor

OLIVES
in cellophane

Soup

CREAM OF FRESH MUSHROOM
blended with molasses mash

Surprise

STEAMED MERCER COUNTY APPLES
with IT

Entree

PLAINSBORO STEAK
with the milk extracted

POTATOES AU GRATIN
"I detected the odor!"

BROCCOLI
the sauce is only 46%

Dessert

PUMPKIN PIE
found in a small 25,000 gallon still

CAFÉ AU LAIT IN A CHEVROLET
without dope

RACKETEER CHEESE

CIGARS

CIGARETTES

REPUBLICAN PUNCH
by 00000

DEMOCRATIC FAVORS
impossible to analyse

APPLE SAUCE—PERSIFLAGE—WISDOM

If you must swear, do it to the Foreman

PENNINGTON*(continued from page 2)*

five years, and there were only a few informations and suits for debts due the United States." There is some error in this, as Elmer did not begin service as District Attorney until 1824, only 2 years before Judge Pennington died. The District Attorney during most of Judge Pennington's service was Joseph McIlvaine, who had been appointed back in 1804.

Beyond that, the minutes of the circuit court show that Judge Pennington first sat on the circuit court at the October term, 1815 (without Justice Washington) and that a grand jury was in attendance. The same is true of the opening day of each term thereafter, from the first Monday of April, 1816 through the first Monday of October, 1820, at Trenton (at which Justice Washington joined Judge Pennington only on October, 1817) and at the April and October terms of 1819.

In 1817, Judge Pennington appointed his son, William Pennington, to be clerk of the District and Circuit courts for the District of New Jersey, and the latter served 23 years until succeeded by Joseph C. Potts, who was appointed in 1840.

The son achieved an outstanding public career of his own, being a member of the assembly from Essex County, later serving five one-year terms as Governor and Chancellor, defeating the then incumbent, Philemon Dickerson (who later was named as U.S. District Judge), and afterwards being elected as Speaker.

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FALL 1988

Editors

Ann G. McCormick
James J. Waldron

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RECOLLECTIONS

This is an excerpt from the book printed by the United States District Court for the District of New Jersey as part of the "Ceremony Commencing the 175th Anniversary of the Original Holdings of Court in the United States District of the District of New Jersey" published in 1984. It was written by the late Honorable Philip Forman, Judge of the United States Court of Appeals to the Third Circuit.

Getting on into the early part of the twentieth century we find that Judge John Rellstab was making a national reputation as a great trial judge. Without academic training, while working as a potter in the chief industry of Trenton at the time, he determined to study law. With infinite patience and persistence he fulfilled his pre-law requirements, obtained a clerkship and was admitted to the bar where he made a considerable mark in the practice in Mercer County. Later he became a City District Court Judge and then a County Judge, following which he was appointed to the federal bench where he served for some 21 years.

I recall that in 1923 he dealt with a spectacular character named David Lamar, who specialized in cornering markets in commodities. Apparently neither a bull nor a bear, Lamar was known as the Wolf of Wall Street, but not of the whistling variety. Finally he got trapped in one of his own corners by the antitrust law. At that time defendants were not sentenced to the custody of the Attorney General as now but the District Judge, himself, chose the place of confinement. In Lamar's case, after conviction in the Southern District of New York he was sentenced to serve six months. Jail space being chronically short in New York it was customary to make use of institutions in New Jersey, and he was committed to the Essex County Penitentiary.

Lamar immediately retained John McGeehan, who is still a leader with the Essex County Bar, to sue out a Writ of Habeas Corpus for him. The ground alleged was that the detention was unlawful because he had been convicted of only a misdemeanor whereas the place to which he had been committed was a penitentiary, which carried the connotation of hard labor; and was only for those who were convicted as felons. Hence, he contended such a commitment nullified the sentence and required his discharge. Judge Rellstab agreed with his contention that he was held in the wrong place but refused to free him entirely. Instead he remanded him to the Southern District of New York for resentence to a common jail. This was done and he was recommitted this time to the Mercer County Jail. Meanwhile he appealed from Judge Rellstab's disposition of the habeas corpus writ and filed a motion to be enlarged on bail pending the appeal. The Judge refused on the ground that after his conviction on the substantive offense in New York and after his conviction was affirmed on appeal he forfeited \$25,000 bail, fled these shores and had to be apprehended and brought back. Judge Rellstab stated in an opinion that he would not be given another opportunity to abuse a similar obligation.

Aside from the sensational aspect of the case I remember it because I was the Assistant United States Attorney representing the Government in various applications. It was on this final one that Mr. McGeehan told me that his client would like to speak to me. I consented and found that Mr. Lamar was dissatisfied with the cuisine at the Mercer County Jail where he insisted breakfast consisted of bread, a raw onion and tea, and that conditions generally were worse than he had experienced at the Essex County Penitentiary. His particular lament was that he had a passion for fig

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RECOLLECTIONS

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newtons which were not only absent from the Mercer County Jail menu but which the Warden, with considerable emphasis, had refused to permit him to purchase. Since the Government was paying Mercer County fifty cents a day for his maintenance his purpose was for me to request the Warden to relent and permit him to obtain a supply of fig newtons. I let myself

be persuaded to talk to the Warden at least to the extent of telling him that the Government would not object to indulging Lamar in this manner if the regulations of the Jail were not too badly fractured thereby. Apparently the warden acquiesced for I next received a very grateful letter from Lamar implying that he was revelling in fig newtons. He appended a list to his letter of what he con-

sidered the hottest tip on the market. It was my good fortune then — and as has usually been the case since — to be low on funds so that I could not follow his advice. But, of course, I avidly watched each of his suggestions every one of which went in only one direction — down. Perhaps he forgot to tell me that he expected me to sell them short.

**TICKET REQUEST FOR THE
SECOND ANNUAL BANQUET OF
THE HISTORICAL SOCIETY OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
ON THURSDAY, OCTOBER, 13, 1988
AT
THE HYATT REGENCY, NEW BRUNSWICK, NJ**

Cocktails - 5:30 p.m. Dinner 7:00 p.m. \$75.00 per person

Name: _____

Address: _____

City, State, Zip: _____

No. of tickets: _____

Amount remitted: _____

Return with check to: **William T. Walsh, Clerk, US District Court, US 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

P.O. Box 419
Newark, New Jersey 07102

