

# NUNC PRO TUNC



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

### LETTER FROM THE PRESIDENT

Your Society has three major projects scheduled for completion in 1989:

1. The 200th birthday celebration of our beloved Federal Court in New Jersey.
2. A two-volume history of the Court.
3. Our Third Annual Banquet on October 5.

On December 22, our Court will be 200 years old. There are plans for the entire Court to convene in Trenton a few days earlier for an historic celebration program. Judge Bissell on behalf of the Court and the Society is planning the program.

Judge Biunno is working with Professor John O'Connor to complete a two-volume history of the Court. Several chapters already have been written. Those chapters are devoted to the Judges, the Bankruptcy Court, the Public Defenders, the United States Attorneys, the Court Reporters and other aspects of the Court. We hope to have this written history completed in the Fall for distribution as part of the 200th birthday celebration.

The first Thursday in October has become the traditional date for our Annual Banquet. We are in the process of obtaining a speaker and plan to give one or two awards. The event, we promise, will be another fun gathering of our nearly 30 judges and close to 500 lawyers who continue to enjoy practicing in the Federal Court.

Donald A. Robinson  
President

### HISTORY IN THE MAKING



Photo Compliments of Grad Partnership

Federal and city officials broke ground April 4, 1988 for the \$60,000,000 Martin Luther King, Jr. Federal Building and U.S. Courthouse, to be constructed in the heart of Newark's downtown government center. Construction of the five-story structure designed by the Grad Partnership is scheduled to begin late this year and expected to open in about two years, according to the U.S. General Services Administration (GSA), the federal agency responsible for the project. Congress approved legislation in October 1986 to name the building in honor of the slain civil rights leader. The courthouse will be built on the block bounded by Walnut, Orchard, Beach and Mulberry Streets, near City Hall and the Peter W. Rodino, Jr. Federal Building. The building, designed in a contemporary reinterpretation of the Neo-classic style of the city's other government buildings, will provide expansion space for the over-crowded federal courts currently housed in the U.S. Post Office and Courthouse.

### SOCIETY HOLDS SECOND ANNUAL BANQUET

The Second Annual Banquet of the Historical Society was held at the Hyatt Regency in New Brunswick on Thursday, October 13, 1988. Again, the dinner was a huge success with over 400 people in attendance.

The Honorable Vincent P. Biunno, who has substantially contributed to the success of the Society as well as to the publication of *Nunc Pro Tunc*, was honored along with the Honorable Thomas G. Walker, who is the oldest living judge of the District Court, having served from December 20, 1939 through December 31, 1941.

Instead of a main speaker, a video excerpt from the history project was presented. The entertaining excerpt was well received and provided an example of the substantial contribution the Society is making in the preservation of the history of our federal court.

### BAR MEETING RECEPTION MAY 19, 1989

A reception at the annual meeting of the New Jersey Bar Association will be held at Bally's Park Place Casino Hotel in Atlantic City on Friday, May 19, 1989 at 5:00 p.m. All are invited and encouraged to attend what has now become a yearly event!

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The Third Annual Banquet of the Historical Society will be held at the Hyatt Regency in New Brunswick on Thursday, October 5, 1989. This year's annual banquet will be particularly special because it will commemorate the 200th anniversary of our federal court.

**PROFILE**  
HONORABLE WILLIAM ROSSSELL

HON. VINCENT P. BIUNNO

Like his three predecessors, David Brearley, Robert Morris and William Sandford Pennington, William Rossell came to the federal bench from the Supreme Court of New Jersey, where he had served as associate justice from 1805 to 1826. He first served under Andrew Kirkpatrick as Chief Justice until 1824, and then under Chief Justice Charles Ewing. Other associate justices with whom he served on the Supreme Court of New Jersey were Elisha Boudinot, William S. Pennington, Mahlon Dickerson and Samuel Southard.

The tendency to name sitting justices of the state's Supreme Court as federal judges for the district may have been due to the requirement that local procedures were to be used in the federal courts, and the district judge thus was expected to guide the circuit justices who sat with them in those matters. The importance of having the district judge advise on matters of local law is illustrated by an entry in the minutes of the circuit court on October 3, 1794, when Justice Blair was presiding alone:

James Brandt ex dem )  
H.V.A. Walton )  
vs. ) In ejectm't  
Lewis Perine )

The Hon'ble Judge Morris not attending this term, and the merits of this suit depending upon a local law of the State of New Jersey, It is Ordered by consent that the cause go off till next term.

On motion of Ab'm Ogden for the plaintiff.

Judge Rossell was born October 25, 1760 in Mount Holly, N.J., son of Zachariah and Margaret Rossell. Available biographies provide no clue about his education or his "reading law." Keasbey (Vol. 2, p. 656) says in passing that he was a saddler as late as 1804, and "a man of good judgment and excellent character" (quoting Judge Elmer's "Reminiscences"), though his bicentennial biography says he was a farmer-millwright in Monmouth County from 1801 on.

In any event, he served in the Continental Army out of Philadelphia, and was mustered out as a sergeant. He served as a justice of the peace for Burlington County in 1795 and 1796, and as judge of common pleas in Burlington County in 1796. He moved to Monmouth County in 1801 and in 1804 was elected to serve as associate justice of the Supreme Court of New Jersey.

President John Quincy Adams appointed him on December 13, 1826 as the United States District Judge for the District of New Jersey following the death of William Sandford Pennington. Judge Rossell served until his death, just four months short of his 80th birthday.



William Rossell, District Judge  
(1760 - 1840)

In his chapter on the United States Courts, Keasbey says (Vol. 2, p. 801) of Judge Rossell that he

was not a lawyer and was glad to be relieved of the more arduous duties of a Judge of the Supreme Court. It was because of his inability to deal with questions of law and practice at the circuit that an act was passed in 1820 requiring the justices of the Supreme Court so to arrange their business that no justice should sit in the same county two terms in succession. This act remained in effect to the great inconvenience of the judges until 1840.<sup>1</sup>

Judge Rossell married Ann, in 1783, and after her death married Jane in 1834. He had four sons: Zachariah, John, William and Joseph; and four daughters: Margaret, Elizabeth, Mary Ann and Catherine.

<sup>1</sup>See Act of 20th of November, 1820, at p. 800 of the N.J. Revised Laws of 1821, prepared by Samuel L. Southard and Charles Ewing.

**PROFILE**  
HONORABLE MAHLON DICKERSON

HON. VINCENT P. BIUNNO

Mahlon Dickerson was born in Hanover Neck, N.J., April 17, 1770, and was educated at the College of New Jersey (now Princeton) from which he graduated in 1789. Although he also read law in Morris County from then until his admission to the New Jersey bar in 1793, Mahlon Dickerson spent the formative years of his public life in Pennsylvania.

After engaging in private practice in Morristown during 1793 and 1794, Mahlon Dickerson joined the State Militia in Philadelphia, PA as a private in 1794. He also read law with James Milnor in Philadelphia until 1797, when he was admitted to the bar there. He practiced law in Philadelphia and became a judge of the Mayor's Court. In 1799, he became a member of the Common Council of Philadelphia and, in 1802, was appointed a commissioner of bankruptcy by President Jefferson. Governor McKeon appointed him adjutant general for the Pennsylvania Militia in 1805 in which position he served until 1808. He then returned to city government for the years 1808 through 1810, during which time he was city recorder for Philadelphia.

Mahlon's immigrant ancestor was Philemon Dickerson, who came from England on the Mary Ann of Yarmouth, in 1637, acquired land in Salem in 1638 and later bought land in Long Island. Philemon's grandson Peter moved to Morris County in 1741 and acquired substantial holdings of land. When Mahlon's father Jonathan died in 1808, Mahlon decided to acquire the

(Continued on Page 5)

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Editors  
Ann G. McCormick  
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HISTORICAL SOCIETY SECOND ANNUAL BANQUET



Pre-Dinner Reception



Mrs. Clarkson S. Fisher, Mr. and Mrs. Joseph Markowitz, Mrs. William Walsh, Hon. Clarkson S. Fisher



William Walsh, Don Robinson



Hon. Stanley R. Chesler, Don Robinson, Hon. Robert E. Cowen, Hon. Vincent P. Biunno



Mr. and Mrs. Frank Fay, Hon. John W. Bissell

HISTORICAL SOCIETY SECOND ANNUAL BANQUET



Hon. John F. Gerry, Hon. Vincent P. Biunno



Hon. Thomas G. Walker



James J. Waldron, Don Robinson, Hon. John W. Bissell



Hon. and Mrs. James T. O'Halloran, William Walsh,  
Hon. Maurice A. Walsh, Hon. John W. Bissell



Hon. Amel Stark, Mrs. Amel Stark

(Continued from Page 2)

shares of the other heirs and himself moved back to New Jersey to take over the management of the famous Succasunna Iron Works which were on the family property. This he did in 1810.

If his rise in Pennsylvania public life had been rapid, in New Jersey it was meteoric. In 1811 and 1812, he was elected to serve in the legislative assembly from Morris County and, in 1813, when Pennington became Governor, Dickerson was elected by the joint meeting of the council and assembly to be an associate justice of the Supreme Court. He was also appointed as reporter to the Supreme Court (as William Sandford Pennington had been) but, in February, 1814, he resigned that duty and published no reports. He served as associate justice until 1815, when he was elected Governor. He also became Chancellor, and was re-elected in 1816. He left the Governor's office on his election to the U.S. Senate, where he served from 1817 to 1833.

In 1832, he was regarded as a highly likely successor to Vice President Calhoun on the second term Jackson ticket, but stepped aside in favor of his friend, Martin Van Buren. He was offered appointment as minister to Russia in May, 1834, but declined, to remain active in Van Buren's own campaign for president in 1836. He then served as Secretary of the Navy until he left in 1838 due to ill health.

It was at this point, after Mahlon Dickerson had retired to private life, that he was called upon to serve, for a little over seven months, as United States Judge for the District of New Jersey, when the incumbent judge, William Rossell, died on June 20, 1840. Martin Van Buren was president, and Garret D. Wall (who had been U.S. Attorney for New Jersey from 1828 to 1837) and Samuel L. Southard, who had been an associate justice of the Supreme Court of New Jersey, were the two senators from New Jersey. Their choice, evidently, was to have Mahlon's younger brother, Philemon, named to succeed Rossell, but Philemon wished to finish out his term in the House of Representatives. This problem was solved by naming Mahlon to the vacancy, and then he resigned in early 1841, to create a new vacancy to which Philemon was then named. In these circumstances it is no surprise that little is found about Mahlon's service on the federal bench.

After that interlude, Mahlon again entered public life to take a leading

and active part in the convention leading to the adoption of New Jersey's 1844 Constitution. He remained active in national politics, supporting General Cass who lost the nomination to James K. Polk, and then worked through Polk's four years to prevent his nomination for a second term, an effort that succeeded, but the election went to



Mahlon Dickerson, District Judge  
(1770 - 1853)

Zachary Taylor. That disappointment marked the end of his activity, and he retired to his estate, "Ferromonte," where he died five years later at age 83. He had never married, and left no survivors other than siblings, nephews and nieces.

### CASE NOTES

#### HON. VINCENT P. BIUNNO

Before 1880, when publication of the Federal Reporter began, there was no established system for the publication of the decisions of the trial courts of the United States, which were the District courts and the Circuit court for each district. There were some reports published: the earliest ones seem to have been published by a reporter, usually at the urging of a judge. Later on, publication seems to have been undertaken by a local printer, probably working together with a reporter.

After publication of the Federal Reporter began, there were many calls for a gathering of the early cases decided before 1880 and, in due course, the editors at West Publishing Co. undertook to prepare what became a 40 volume set called Federal Cases. In that set, all the earlier opinions of the various district and circuit courts were arranged in one comprehensive, alphabetical array, and the set, together with the later Federal Reporter, offers an unbroken line of cases from 1789 to the present time.

There is no index, however, for locating the decisions from a particular district except by paging all 40 volumes manually. To overcome that problem, references were sought to identify the original books of reports, and ten volumes were found in what had been the library of Mr. Justice Joseph P. Bradley, which had been deposited with the law library of The Prudential Insurance Company of America.

With the generous assistance of that company, acting through its former secretary, Isabelle L. Kirchner, Esq., and its present secretary, Dorothy K. Light, CPCU, the 10 volumes found were loaned to the Archives Committee of the History Society which paged them to locate those decided in New Jersey District.

All New Jersey opinions were photocopied, along with some Pennsylvania decisions of interest here, and put in binders along with the back cover, flyleaf, preface, table of cases and index for each volume. A set of this material has been deposited with the Newark branch of the Third Circuit library, for the use of interested scholars.

The volumes embraced by this effort are:

- John B. Wallace's Reports for the Third Circuit, 1801
- Peters 3rd Circuit Reports, 1819
- Washington's Circuit Court Reports, Vols I through IV covering cases decided from 1803 to 1827 (except for those already in Peters 3rd Circuit Reports)
- Baldwin's 3rd Circuit Court Reports, Vol I (1828 - 1833)
- Wallace Jr's 3rd Circuit Reports, Vols I-III (1842-1862).

This series still leaves a gap in circuit court reports from 1863 to 1880, and includes no reports of decisions by district judges sitting alone. Further research hopefully will locate them.

### SOCIETY ELECTS OFFICERS AND DIRECTORS

On December 8, 1988, the Board of Trustees unanimously adopted the recommendation of the Nominating Committee to re-elect the same officers and trustees as well as two additional trustees. The two additional trustees are Dean Ronald J. Riccio, Dean of Seton Hall Law School, and Robert C. Morris, Director of the National Archives.

6 \* NUNC PRO TUNC

RECOLLECTIONS

HON. CLARKSON S. FISHER, SENIOR JUDGE

When Judge James Coolahan arrived at his chambers one day in the early 1970's, he found a note attached to his door. It read,

"Dear Jim:

I note that you have been coming in after 9:00 A.M. for several days. Please drop in and see me about this.

Signed - Tony"

Tony, of course, was Chief Judge Anthony Augelli.

Judge Coolahan, muttering imprecations and "I don't work for him," stormed over to Judge Augelli's Chambers.

They both shouted at each other for a couple of minutes, when they both realized at the same time that they had been taken -- by Judge Lawrence A. Whipple.

\* \* \* \*

-- From 1933 New Jersey Law Journal --

For the first time in the history of the Federal Court in New Jersey a Referee in

bankruptcy has fixed fees to be allowed equity receivers and their counsel. The fees allowed total \$9,500 less than were applied for. The procedure was followed in the equity receivership of the Ray Chain Stores.

Bankruptcy proceedings followed the filing of the equity suit and Judge Fake held that the fees of the equity receivers and their counsel were to be determined by a bankruptcy Referee. On this point both the United Philadelphia and the United States Supreme Court sustained Judge Fake.

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THE HISTORICAL SOCIETY OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY MEMBERSHIP RENEWAL APPLICATION FOR 1989

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.

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