

NUNC PRO TUNC

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



Message from the President

Twelve years ago, our beloved Chief Judge John F. Gerry reminded our Federal Family, so eloquently, of "that rare privilege most often denied to others, to reach beyond ourselves in the service of the Court." Our Society's mission has been to fulfill that ideal.

Our Court, the country's second oldest District Court, began 126 years ago when President Washington nominated and the Senate approved our first Federal Judge, David Brearley. Since then, our judicial team has had 75 more District Judges, 25 Magistrate Judges and 26 Bankruptcy Judges. Their judicial work is discussed in the forthcoming history of the Court entitled, "This Honorable Court." Professor Mark Lender of Kean University, the author, having completed his detailed research into the archives, the history will be published within the next few months.

Our Society's Board continues to reach beyond itself in many projects collecting and preserving the history of the Court. Permanent exhibits have been placed in the Courthouses in Newark, Trenton and Camden. We have opened an Attorneys' Conference Room in each of those vicinages where recent history centered around Judges Brotman, Barlow and Whipple adorn the walls; we publish periodically our newsletter entitled *Nunc Pro Tunc* where articles of historical interest are published; and we sponsored

a full day program in Camden about the highly publicized Camden 28 trial of civil protestors during the Viet Nam war.

Each year we have an annual gala in the Newark Courthouse which on October 16 will be a tribute to Justice Brennan's career on the Supreme Court. We will also be presenting a Lifetime Achievement Award to a revered member of the Federal Family.

We are proud of our accomplishment in locating the long lost hand-carved, limestone Eagle which was one of the corner pieces of the first Federal Building in New Jersey. Unfortunately, after we restored and placed her in front of the Courthouse in Newark where she proudly perched, a vandal sliced off her head. For the past year, we have been involved in retaining a sculptor and other restoration planning. We are grateful to a Board member, Jon Lerner, of Skadden Arps, for his firm's generosity of funding the expensive project.

As Judge Gerry said, "We are but temporary custodians of the Court's traditions and authority." So, our Society is preserving for future members of the Federal Family some of the proud history of the second oldest District Court in the Nation.

Donald A. Robinson, President

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REMEMBER OCTOBER 16th!

SECOND ANNUAL GALA



The Wit and Wisdom of Lawrence Whipple

Judge Lawrence Aloysius Whipple served as a district judge for 16 years, but he left an indelible mark upon the District of New Jersey which continues to this day. Judge Whipple had many outstanding qualities, but perhaps his most enduring legacy was his ability to make everyone around him smile. He often used his Irish wit and charm to great effect in resolving disputes.

On one occasion, Judge Whipple was conducting a settlement conference with counsel and the parties. The Judge employed the standard settlement technique, alternately shuttling each side into and out of his chambers. After a lengthy period of time, he had moved the parties close to a settlement, but they remained \$5,000 apart. Judge Whipple suggested that plaintiff's counsel should accept the defense's offer, but counsel insisted that his client "absolutely refused" to accept the defense's last offer. Both sides remained intractable and it appeared that a trial would be necessary. Judge Whipple then casually asked both counsel if they would agree to let him speak privately to the plaintiff in his chambers. Both sides agreed, knowing full well that there was no way that the plaintiff would accept the defense's offer. After the Judge and the plaintiff were behind closed doors for five minutes, both counsel could clearly hear the judge and the plaintiff laughing out loud. Ten minutes later, Judge Whipple emerged triumphantly with his arm around the plaintiff and announced: "The case is settled for the defense's last offer." Puzzled by the sudden turn of events, both lawyers inquired how the Judge had convinced the plaintiff to accept this previously unacceptable offer. The Judge mischievously pointed to the plaintiff who was grinning broadly and holding a garment carefully folded over his right arm. "He made a comment about my robes," Judge Whipple smiled, "and I told him he could have them if he took the last offer."

"He had a unique ability to relate to people from all walks of life. He often used those street smarts to sidestep potentially embarrassing situations."

Growing up in Jersey City, Judge Whipple had the "common touch." He had a unique ability to relate to people from all walks of life. He often used those street smarts to sidestep potentially embarrassing situations. During the Vietnam War, Judge Whipple was presiding over a trial involving a number of well known war protesters. The pretrial publicity was enormous and on the first day of trial the press was out in full force. That morning, all of the defendants had agreed that when the courtroom deputy came out and told everyone "All rise", they would remain seated as a show of their contempt for the proceeding. The press was alerted in advance and poised to report it in the next day's newspapers. However, one of the Judge's many friends in the courthouse heard the rumor and related it to him just as he was about to go on the bench to start the trial. Judge Whipple promptly put on his robes, strode right past his surprised courtroom deputy and walked directly into the courtroom as he quickly announced, "I would like everyone to please remain seated."

Everyone who appeared before Judge Whipple has a favorite story about his compassion, humility and wonderful sense of humor. He was beloved by lawyers, litigants and all of the people who worked in the federal courts. Although Judge Whipple passed away over 20 years ago, practitioners still smile at the mere mention of his name. Many of our current district judges appeared before Judge Whipple as attorneys, and they proudly acknowledge his contributions to the collegiality of the federal bench in New Jersey. The Attorney Conference Room on the Fourth Floor of the Lautenberg Courthouse was dedicated last year to Judge Whipple's memory. It is open to the public and all members of the Historical Society are encouraged to use it.

Timothy M. Donohue

Lady Justice: A Controversial Artistic Depiction

The towering bronze statue of a woman that stands in the third floor rotunda of the old Federal Courthouse in Newark is well known to all Federal practitioners. The statue, called “Lady Justice”, was intended by her sculptor to embody the concept of justice. Did the sculptor succeed? That question was hotly debated upon the statue’s installation in the Courthouse in the 1930s.

Lady Justice was the result of an open competition sponsored by the Treasury Department in an effort to furnish the newly constructed Courthouse with artwork. The request for submissions specified that the statue, which was intended to stand in a niche behind the bench of Courtroom No. 3 on the third floor, should be a “distinguished, vital, modern conception” of justice. Applicants were provided the basic parameters to follow: the statue must be seven feet tall, fabricated in bronze and covered with gold leaf. The prize for the successful entry was \$6,500, intended to cover both costs of completion and installation.

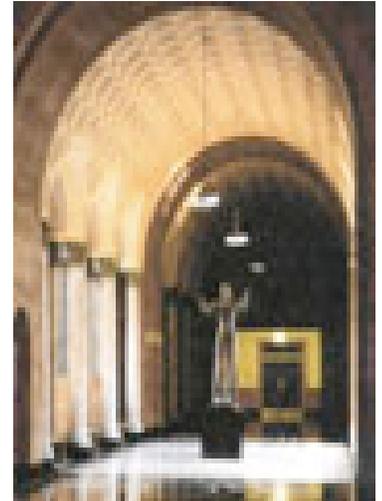
Of the 69 entries received, including from well known artists and the wife of the building’s architect, the winning design belonged to Romuald Kraus, a relatively unknown sculptor. Although not publicly acclaimed to that point, Kraus had passionately dedicated his life to art. Born in Austria in 1891, he came to the United States in 1924 after a long period of schooling and apprenticeships in Vienna, Stuttgart, Berlin, Weimar and Munich. Once in the United States, he worked steadily until the Depression and then worked under the WPA. He first worked designing architectural terra cotta in New York and later created sculptures for Howard University in Washington, Evander Childs High School in New York and the Newark Museum. He taught at the Cincinnati Art Academy before going to the University of Louisville in 1947, where he remained until his death in 1954.

For Lady Justice, Kraus designed a figure of a woman, nude to the waist,

with strong upraised arms and little ornamentation. Kraus drew inspiration from his brother who was a Judge in Kraus’ native Austria and with whom Kraus had frequent conversations concerning the artistic conception of justice. From these conversations, Kraus came to view justice as “a motherly figure, having understanding, a figure which would give an accused man hope and courage.” The raised hands of Lady Justice were meant to convey a sense of balance. The arms, sturdy and strong, were intended to give strength to the judge. She was conceived to reach out “in an earnest supplication for truth.”

Significantly, Kraus’ vision did not employ the more common symbols of justice such as the blindfold, sword, shield and scales. To Kraus, these symbols diluted the power of his work and were contrary to what he understood justice to mean. Lady Justice was not blindfolded because Kraus believed that “justice is clear-eyed, not blind.” Similarly, Kraus believed that while justice should be strong, she should not be threatening. A threatening figure, armed with a sword, would be “most un-American.”

Kraus’ Lady Justice had fluid lines and was noticeably more streamlined than the other entries so in that sense it satisfied the stated goals of the Treasury Department’s request for a modern rendering, consistent with the artistic approach of the Depression era. Nevertheless, despite its clean, linear qualities, Lady Justice displayed roots in classical iconography. The idea of depicting justice as a female figure dates back to Themis, Greek goddess of justice and law, and Justicia, Roman goddess of law. Early renderings of Themis show her without a sword because (as Kraus also believed) justice should embody consent, not coercion. The depiction of Lady Justice as appearing clear-eyed, without a blindfold, is also consistent with classical representations. It was only in the 16th century that portrayals of justice begin to show a blindfold. Although the blindfold



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Lady Justice (Continued)

has now come to stand for impartiality, the artists who initially used the symbol of the blindfold did so cynically to suggest that justice did not see what injuries were coming to pass in her name.

Kraus' depiction was idealistic and spiritual, revealing a well-intentioned portrayal of the idea of justice with classical foundations and modern lines. Despite this, she was not universally well received upon her selection as the winning design. One of her strongest opponents was Judge Guy L. Fake, whose courtroom was the intended destination for the statue. To Judge Fake, Kraus' work was "horrible" and "too scantily clad". The impression the statue had on Judge Fake was the exact opposite of what Kraus intended. Far from the compassionate motherly figure envisioned by Kraus, Judge Fake believed the statue tended to convey a sense of oppression. "The menacing manner in which the arms are raised brings a picture of brute force. In that figure I see not the spirit of justice, but the spirit of ruthless confiscation." Judge Fake concluded that the statue "smacks blatantly of Communism."

Through public debate, Judge Fake also voiced his erroneous contention that classical conceptions of justice necessarily contained the ornamentation Kraus' work lacked. Judge Fake stated, "I'm old-fashioned enough to stand by the classical conception of a blindfolded Justice, with sword and scales and looking like a human being."

Judge Fake was not alone in criticizing the statue. Although the debate was often clothed in the rhetoric of artistic criticism, politics was surely at work. Chiming in with the chorus against the selection of Kraus' statue was a competitor, Mrs. Vicken Totten, the wife of the architect of the Courthouse, who felt her entry was more deserving. She submitted a seated model with a sword

strapped to her waist. Not shy in her public pronouncements, Mrs. Totten stated that the Kraus statue "cheaped artistically" the Courthouse her husband designed and was nothing but a "skinny nude". For his part, Major George O. Totten, Jr. made it plain that he objected to the idea that there was any type of open competition for the selection of a statue. He labeled Lady Justice a "monstrosity". Unlike his wife, who saw a "skinny nude", Major Totten felt that the Treasury Department "selected a statue of a woman with biceps like a heavyweight prize fighter, and neck like a wrestler." He reasoned, "I can't find anything in that figure that is significant of American justice."

Kraus was bewildered by the negative comments hurled at his work, and by the allegations regarding his political affiliations. He flatly denied that he was a Communist, noting that he had never voted or attended a political gathering of any sort. Although grateful for the help the New Deal gave to artists, he was unsure if he was a "New Dealer." For Kraus, politics did not play any role in his artistic depiction. He believed, "an artist must keep his mind and spirit free from political entanglements."

Ultimately, (as was comprehensively depicted in a film on the construction of the Courthouse by the Historical Society's resident filmmaker, James Waldron), Judge Fake banished the statue from the pedestal behind his bench to a small locked room in the Courthouse where no one could view her. At about the same time, the art community seized hold of the issue. The San Francisco and New York World's Fairs and a host of major museums sent requests to display Lady Justice. She toured the country to rave reviews, with her exhibition at the San Francisco World's Fair resulting in the top award for best modern sculpture. After her hugely successful tour, she eventually returned

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Lady Justice (Continued)

to the Courthouse in Newark for which she was created. Never accepted back into Judge Fake's courtroom, she took her spot in the majestic third floor passage, bathed in sunlight and open to full view, where she has remained.

Lady Justice is a beloved figure for many in the Federal legal community. As a work of art, however, she is open to

interpretation. The difficult job facing artists is to bring alive a concept that is often claimed to be universal, but in many respects is the function of individual experience and perspective. Did Romuald Kraus successfully portray the concept of justice in this statue?

Claire Cecci

Docketing through the Years: From Pen and Ink to CM/ECF

When the New Jersey District Court was established in 1789, the Court's first Judge, David Brearly, was not equipped with a laptop. Neither was then Clerk, Jonathan Dayton. Each used the word processing tool of the day, pen and ink. I imagine those early scribes to appear somewhat like Bartleby, the fictitious Melville scribe, who worked on a sloped desk in a candle lit office.

Unpublished court documents were hand written and hand signed, and this practice continued into the first half of the 20th century. Then, the typewriter, and eventually the electric typewriter, made the work of a docket clerk easier, but the true revolution did not occur until the mid 1980's. It seemed that all areas of business were either automated or talking about becoming automated. When I started with the Court as the Assistant Systems Administrator in April 1985, everyone used a typewriter. Major supply items were typewriter ribbons and white out. Each morning, the Docket Clerks would retrieve their docket trays, containing their docket sheets, and wheel them to their desks. Docket sheets were selected and cranked into typewriters. Eyed up and correctly typed, the entries were checked by a supervisor, and the docket sheets were returned to the tray. Each evening, the trays were wheeled back into the fire proof vault. Not much had really changed in the past 200 years.

In the mid 80's, there were probably only five personal computers throughout the District. A single table top main frame computer, called the Four Phase, held the administrative databases for a handful of users who accessed the system over modems and dial up data lines. This system was slow, difficult to maintain and prone to failure. Just the creation of backup tapes took almost half of a day. The mention of anything becoming computerized in the Clerk's office was met with laughter and the derisive phrase "not in my lifetime."

However, technology was changing. Mainframe computers were the dominant machines to satisfy heavy data processing requirements, but the personal computer also was being introduced. Remote access was seeing improvements through the use of leased data lines, and modem speeds were increasing. The technology was there, and when computerized docketing was introduced by the Administrative Office in Washington to the District Courts, it suddenly had the potential for great success. The Integrated Case Management System, or ICMS, was a large database, created using a language called Unify which ran on the Unix operating system. Unix provided a secure environment and allowed multiple users to do multiple tasks.

With the introduction of ICMS, docket clerks were introduced to a new, more modern tool for doing their work.

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“The comfort level was with paper, and the fear of entering data into a computer was like throwing information into a black hole.”

Docket (Continued)

Even so, there were questions about how this technology would change their every day tasks. Docket clerks were still analyzing, managing and typing docket information. What was changing was how information was stored and retrieved. It was changing a mind set. The comfort level was with paper, and the fear of entering data into a computer was like throwing information into a black hole. Nevertheless, ICMS was designed to make the job of docketing more efficient and less time consuming. Standardized events allowed the docket clerk to enter case information through a set of pre-designed screens. Pre-printed text was displayed after the event was completed. Reports were available for both Clerk's Office and Chambers' staff. Computer terminals were available to the public for viewing docket and judgment information. Also, the system was customizable which allowed the courts to tailor event codes and reports. As staff became more at ease with ICMS, the technology was embraced.

As anyone who has ever used a computer knows, you love them when they work. You hate them when they do not. The ICMS system was no exception. At first, it seemed to go down at the worst possible moments. The hardest thing for me to do in 1990 was to tell a supervisor that the system was shutting down, especially on the last day of the month. Passing along this news meant docketing production would be affected.

Current technological changes, larger hard drive sizes, the internet, high speed data connections, faster personal computers, as well as expert customization by our Systems Manager Lorraine Schoenstadt, all contributed to stabilizing ICMS and making it more reliable. But as the cartoon says “as soon as your computer is running right, time for an upgrade.” So, ICMS will be going the way of the typewriter. The new system, referred to as CM/ECF (Case

Management/ Electronic Case Filing), replaces ICMS because the aging software and operating system are well outdated and no longer supported. Implementation of CM/ECF has already started in the District Court of New Jersey.

CM/ECF takes full advantage of the revolution ICMS started. It is browser-based and, as such, provides access to the system from practically any location, any time. Attorneys file their own legal documents directly to the system, in essence doing their own docketing. The system provides for immediate E-Mail notification to registered participants and documents will now be stored electronically instead of in paper file folders. All of these benefits work to further streamline the act of docketing and move us closer to a paperless office.

Much can be learned from the past fifteen years. Keeping users involved and aware of the changes will make the transition to a new system less stressful. Training on all levels is essential. Clearly defined position responsibilities, before the system is rolled out, will make training easier and eliminate user confusion about their new roles. A clear understanding of data integrity prior to and during training will help insure a cleaner database. And, whenever possible, a push to standardize operations in all divisional offices and in Judges' chambers is always beneficial.

Unlike the docket clerk of 1985, those working in the court today are better equipped and prepared to adjust to this new system. They have at their disposal the latest hardware and software. They also have experience using the internet, E-mail and word processing software. We are confident that our preparations, planning activities, training and assistance and support from the Court and the bar will increase our chances for a successful implementation of CM/ECF. And when that happens, we can think back to those “inkwell” days and be grateful for how far we have come.

*Tom Dileo, Director of MIS,
U.S. District Court, D.N.J.*

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Russian Judges Visit District



Judges from the Russian Federation pose with Chief Judge Bissell during their visit to the District in September, 2003. From left to right: Helen McCloskey, Svetlana Shnyrova, Judge Bissell, Svetlana Galanova, Vasiliy Dolinnyy, Vladimir Borodinov, Vladimir Podminogin, Brian Steller (President, Essex County Bar Ass'n) and Taissiya Markelova

Evolution of the Magistrate Judge System

As a compromise between supporters of federalism and activists for states' rights, Congress established the federal judiciary in the Judiciary Act of 1789. Under such legislation, federal courts were authorized to handle federal civil and criminal matters, while state judicial officers applied state law to resolve matters involving arrest and bail. Shortly after the enactment of the Judiciary Act of 1789, however, the resistance of several states to federal policies impeded federal criminal process. Consequently, in 1793, Congress divested state judicial officers of jurisdiction over preliminary federal criminal matters and authorized federal circuit courts to appoint "discreet persons," subsequently designated "United States commissioners" ("commissioners") to take bail in federal criminal cases. Over the course of the next 175 years, commissioners' responsibilities steadily expanded. Eventually, commissioners were even authorized to try and sentence defendants accused of petty offenses committed on federal properties such as national parks, military bases and Native American reservations.

Notwithstanding their increasing responsibilities, however, the Senate questioned whether commissioners were improving the judicial process particularly when the number of cases filed in federal courts increased exponentially and the extensive backlog plaguing such courts was worsening. As such, beginning in 1965, as part of a comprehensive review of the federal judiciary, a Senate subcommittee conducted hearings to explore the effectiveness of the commissioner system. Numerous fundamental flaws in such system were identified. For example, commissioners were not required to be attorneys, they lacked guidance and training, the vast majority of commissioners served in such capacity on a part-time basis and support services provided to commissioners were inadequate. Further, commissioners were compensated on a fee-per-activity basis, they received meager fees for their services and district judges possessed complete discretion to appoint and remove commissioners.

Congress addressed the defects in the commissioner system in 1968 with

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Society of the
United States
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Magistrate Judges (Continued)

the enactment of The Federal Magistrates Act. Under that Act, the office of the United States commissioner was abolished and succeeded by the office of the United States Magistrate. Congress intended that this new judicial officer assist district courts to improve the quality of justice and expedite the disposition of cases. Congress achieved its goals; the contribution of magistrates to the judiciary cannot be overstated. After a 1-year pilot program, which was implemented in five district courts including the District of New Jersey, appointments of magistrates were made throughout our nation.

Confident in the contributions made by magistrates, Congress has progressively expanded their jurisdiction. For example, in 1976 Congress authorized magistrates to conduct habeas corpus proceedings and, in 1979, it authorized magistrates to conduct all civil trials providing the parties consented. In 1990, Congress officially designated this position United States magistrate judge. Today, magistrate judges' responsibilities include conducting pretrial conferences, settling cases, deciding motions, hearing preliminary criminal applications and trying criminal misdemeanor trials when the defendant consents. Their contributions have also been recognized by the Executive Branch as evidenced by the growing number of appointments of

district judges from the ranks of magistrate judges. We are proud that New Jersey is 1 of 2 states with the greatest number of appointments of district judges from the ranks of magistrate judges.

Over the past decade, the number of matters handled by magistrate judges has nearly doubled. In fiscal year 1992, magistrate judges handled 499,572 matters, according to the Administrative Office of the United States Courts. In fiscal year 2002, magistrate judges handled 880,129 matters. Of these matters, 63% were criminal.

The practice of law was different in 1951 when District Judge Dickinson R. Debevoise began his career as a law clerk in the District of New Jersey. At that time, there were only six district judges serving New Jersey. It was an era in which the practice of law was more genteel, Judge Debevoise recalled, when neither the judiciary nor the practitioners faced the pressures that exist today. Due to the increasing complexity of litigation, Judge Debevoise believes that magistrate judges play an indispensable role in today's federal judiciary. In fact, Judge Debevoise "can't imagine, because of the case load, civil and criminal, being what it is to function without magistrate judges."

*Frances C. Bajada, with gratitude to
Antoinette F. Segreto*

MEMBERSHIP INFORMATION

Individual Membership:

_ Government/Court Employees:	\$25.00
_ Admitted to Practice 1-5 years:	\$25.00
_ Admitted to Practice 5 + years:	\$50.00

Firm Membership:

Firm Size:	1 - 5 Attorneys:	\$200.00
	5 - 10 Attorneys:	\$300.00
	10 - 20 Attorneys:	\$500.00
	20 + Attorneys:	\$750.00

Please make check payable to: U.S.D.C. Historical Society and return check to:

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