



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

# NUNC PRO TUNC

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Editor, Frances C. Bajada  
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## A GOLDEN ANNIVERSARY

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May 17 marked the 50th anniversary of one of the United States Supreme Court's most notable cases, *Brown v. Board of Education of Topeka*. That case, of course, made clear that racial segregation in public schools was unconstitutional and struck down the doctrine of "separate but equal" in public schools.

Attorney General Peter Harvey and the Historical Society of the United States District Court for the District of New Jersey held a program at the New Jersey Performing Arts Center on April 29 titled "Fifty Years After Brown: Are We There Yet? A Discussion of Goals, Achievements and Limitations." Among the panelists at that program were the Honorable Robert L. Carter, who argued *Brown* before the Supreme Court as a practicing attorney, Fred D. Gray, who represented Rosa Parks, and New Jersey's own Raymond Brown.

The April 29 program was excellent and we laud the attorney general and the historical society for planning and

presenting it. The program served as a reminder of the importance of the *Brown*

decision. The program went well beyond recognizing this landmark case, though. It was a forum for discussion of the current impact of *Brown* in our society. Answering the question posed in the title of the program, "Are We There Yet?," many would answer with a resounding "no."

Although the decision in *Brown* was a landmark in stopping an unconstitutional doctrine, the case really marked a beginning and not an end. Programs and forums such as the one held on April 29 are extremely useful and desirable. Examining and openly discussing racial issues



Panelists Theodore M. Shaw, Esq., Judge Robert L. Carter and Attorney General Peter C. Harvey.



Panelists Raymond A. Brown, Esq., Fred D. Gray, Esq. and Professor Michelle Adams.

promotes understanding, eases tensions and, hopefully, will lead to the resolution of these issues.

## **DECONSTRUCTING HISTORY: FENEMORE V. THE UNITED STATES**

**By Alan S. Naar and Jemi M. Goulian**

Post-Revolutionary War America was a country facing a substantial national debt. In the spring of 1783, Congress estimated the domestic debt at \$34,000,000, equivalent to over \$485,000,000 today. New Jersey, along with her sister states, was also facing formidable problems. The long war had disrupted New Jersey's economy, brought ruin and hardship to many of the state's farms and buildings, and produced a staggering burden of debt. Both the State of New Jersey and the United States of America were facing economic crises.

To further complicate matters, the United States Government was also the victim of fraud, even in its infancy. *Fenemore v. The United States*, 3 U.S. 357 (1797), one of the first cases brought

before the "Circuit Court for the District of New Jersey," and then appealed on a Writ of Error to the Supreme Court of the United States, involved claims brought against an individual alleged to have defrauded the fledgling nation.

The facts in *Fenemore* are fairly straightforward. Mr. Fenemore, the appellant before the Supreme Court, allegedly misrepresented to a public officer of the United States that the Government owed him money under a contract. As proof of the contract, Fenemore provided vouchers to the public officer. Fenemore then used the money to obtain stock worth approximately \$4,273.50. This stock increased in value to over \$8,000.00 by the time of trial, with interest of over \$600.00 paid out to Fenemore.

The specific issue before the Supreme Court was whether the United States Government could allege fraud and deceit and yet concurrently seek relief for the value of the purchased stock that was a product of the alleged fraud and deceit.

At trial, the Government sought relief on three counts. A careful examination of the Supreme Court's language evinces the dramatic transformation from the vernacular of 1797 to that which we are familiar with today. The first count, as articulated by the Court, "charged [Fenemore] with an assumpsit, that in consideration that the Commissioner for settling Continental accounts, would issue a certificate for [approximately \$4,273.00], he promised his account against the United States was just for that sum, and exhibited certain vouchers to support it; that the account ought to be allowed, and that the vouchers were true and lawful: It averred, that confiding in the said promises, the United States by their said Commissioner, did issue the said certificate: And it assigned as a breach of the said

promises, that [Fenemore] did not regard the same, but craftily deceived the United States in this, that the said certificate ought not to have been issued and delivered, that the account and vouchers were not true and lawful; whereby the United States had been greatly deceived.”

The second count alleged, “that whereas the United States had before that time issued and delivered to [Fenemore] the said certificate, and had accepted and received from him as lawful vouchers for the issuing and delivery thereof, the account aforesaid, together with certain paper writings in the declaration set forth, in consideration thereof he undertook and faithfully promised that the said account was a just and true account, and that the sum mentioned in it was lawfully due from the United States and ought to be so certified, and that the said certain paper writings then and there exhibited as further vouchers for issuing the said certificate, were regular and lawful vouchers: Nevertheless, [Fenemore] did not regard his said last mentioned promises, inasmuch as the said account was not true, nor was any part thereof due, nor were the said paper writings lawful vouchers, by means whereof the United States were by him deceived and greatly injured.”

The third count “having stated an assumpsit in the usual form, for [\$8000.00] received to the Plaintiff’s use, concluded that the Defendant not regarding his several promises, for making payment thereof, had not paid the said sum of money, but refused and still refuses to pay the same to the damage of the United States [\$8000.00].”

Distilled to their essence, the first and second counts were for both fraud and deceit. The Government alleged that the transaction between Fenemore and the public officer was a nullity due to

Fenemore’s alleged fraudulent conduct. The third count sought to have the alleged fraudulent transaction be deemed valid, therefore allowing the Government to recoup the entire value of the purchased stock, not simply the value of the original fraudulent transaction.

The Government was arguing both that Fenemore could be found liable for fraud and deceit that would result in the transaction being declared a nullity and the Government receiving the value of the transaction (\$4,273.50), and that the transaction was only voidable and therefore the transaction was not a nullity and the Government should receive the current value of the stock (\$8,000.00) as a remedy. At trial, the jury made factual findings that supported all three claims. The Supreme Court granted a Writ of Error to the “Circuit Court for the District of New Jersey” to resolve the issue on appeal -- whether the Government could concurrently maintain these seemingly opposite legal positions.

Upon review, the Supreme Court held that, although in law such counts cannot be alleged in the same action, inherent powers of equity would allow so in this case. The Court reasoned that if one falsely represents that he is a creditor, and in doing so obtains a certificate of stock in the public funds because he claims he is owed money, the Government may waive the tort, affirm the transaction, and recover the value of the stock in express assumpsit.

Historically, assumpsit was an action in tort, but was soon transformed into an action in contract, “becoming afterwards a remedy where there was neither tort nor contract.” As explained by James Barr Ames in “*Three Select Essays in Anglo-American Legal History: The History of Assumpsit*,” assumpsit was “introduced as a special manifestation of the action on the case, it soon acquired the

dignity of a distinct form of action, which superseded Debt, became concurrent with Account, with Case upon bailment, a warranty, and bills of exchange, and competed with Equity in the case of the essentially equitable quasi-contracts growing out of the principle of unjust enrichment.” Ames opined, “surely, it would be hard to find a better illustration of the flexibility and power of self-development of the Common Law.”

Though the Supreme Court found the Government’s argument to be imperfect, the material facts supported the Government’s position. Further, public policy compelled that the transaction be affirmed. The Court opined that one who defrauds the Government should not benefit from it. By simply nullifying the transaction, Fenemore would retain the profits he eventually earned. Moreover, by simply requiring Fenemore to pay back the original amount, Fenemore would continue to reap the rewards of his own deception by continuing to collect interest. The Supreme Court concluded that no man should be able to defend himself in an American court of justice based on his own guilt of another crime.

The principles of law espoused by the Supreme Court in *Fenemore* have guided a number of courts throughout the two hundred years since the case was decided. For instance, in *Buford v. Wilmington Trust Company*, the United States Court of Appeals for the Third Circuit specifically noted that “it is elementary law that where the same

transaction is both a breach of contract and a tort the plaintiff may waive the tort and sue in assumpsit.”

Perhaps the case most factually similar to *Fenemore* is *B.V. Emery & Co. v. Wilkinson*, where the United States Court of Appeals for the Tenth Circuit found that when a party was fraudulently induced to purchase stock, such fraud did not render the transfer of the stock void, but merely voidable. It was the purchaser’s option to elect to affirm the transaction and sue at law for damages, or to avoid the transaction and sue in equity for rescission. However, unlike the decision reached by the Supreme Court in *Fenemore*, the court in *B. V. Emery* did not permit both claims to be joined in one action.

As these more recent cases illustrate, the decision and the reasoning of *Fenemore v. The United States* is still timely. Perhaps the reason for its endurance over the past two-hundred years lies in the words of Justice Iredell: “The defence is, indeed, an extraordinary one: it is an attempt to make the very act of fraud, an instrument, or shield, of protection. But, I trust, no man will ever be able to defend himself in an American court of justice upon the ground of his own turpitude.”

Sources available upon request.

*Fenemore* is discussed in the forthcoming history of our Court: [“This Honorable Court”: The United States District Court for the District of New Jersey, A History.](#)

## **TRAILBLAZERS**

**By Esther Salas**

Each of the three Latino federal

judges presently sitting on the United States Court of Appeals for the Third Circuit and the United States District Court

for the District of New Jersey can be described, first and foremost, as true “trailblazers.” Emerging from strong Latino families who persevered in times of immense struggle, Honorable Joseph H. Rodriguez, United States District Judge, Honorable Julio M. Fuentes, United States Circuit Judge, and Honorable Jose L. Linares, United States District Judge, have attained positions of distinction and prestige, made possible by their hard work, dedication, and commitment to public service.

In 1985 when President Ronald Reagan appointed Judge Rodriguez to the Bench, Judge Rodriguez became the first Latino in New Jersey’s history to hold that position. His appointment to the Bench was a proud moment for the Latino community. Judge Rodriguez, the son of a Cuban immigrant and a Puerto Rican migrant, credits his parents for his success. Mario and Carmen Rodriguez were role models to their children, and reminded their children to stay true to themselves and always remember where they came from.

Judge Rodriguez credits his father as the most influential person in his life. Mario’s journey to the United States is one that can only be described as spellbinding. During World War I, on June 2, 1918, later to be referred to as “Black Sunday,” the S.S. Carolina, a passenger ship en route from Puerto Rico to New York, came under attack by German U-boats off the coast of Atlantic City. Mario, one of the passengers on the S.S. Carolina, which was sunk that day, relinquished his place in a lifeboat to a woman. Later, Mario was fortunate to get pulled into another lifeboat. However, since there was not enough room for everyone in the lifeboat, men rotated time in the water and did their best to stay alive. Many crew and passengers aboard the Carolina drowned in the attack that day and

during a subsequent storm. Mario and several other survivors on the lifeboat made it to the waters off Atlantic City more than 44 hours later. Mario jumped out of the boat and into the breakers of the beach to wade ashore, and he and other survivors were greeted by a band which happened to be in the area for a convention. As word of the survivors spread, the band rushed to the shore and began to play the music of “The Star-Spangled Banner.”

Judge Rodriguez’s parents met, fell in love, married and became one of the first Latino families to settle in Camden, New Jersey. They became active figures in the community and Carmen was one of the founders of the first Hispanic Catholic Church in Camden, Our Lady of Fatima. With activist parents who were devoted to the Latino community, it is not surprising that Judge Rodriguez went on to become an influential member of the bar.

Upon receiving his law degree from Rutgers Law School-Camden in 1958, Judge Rodriguez joined the law firm of Brown and Connery, and became a partner in 1959. However, in 1971, Judge Rodriguez emerged as a true community leader when he, along with his brother, Mario, helped ease the massive tension between Camden’s city Government and the community. Following the brutal beating of a Hispanic man by city police officers, Camden erupted in riots which led to civil unrest. Judge Rodriguez, trusted by both sides, stepped into the conflict and acted as a negotiator between the Hispanic protestors and the mayor’s office.

Judge Rodriguez’s move from the private to the public sector occurred in 1972 when he was named by Governor William Cahill to serve as the Chairman of the State Board of Higher Education. In 1974, Judge Rodriguez became the head of the State Commission of Investigation

and remained in that position until 1979. Judge Rodriguez became the first Latino to serve as President of the New Jersey State Bar in 1978. In 1982, Governor Thomas Kean appointed Judge Rodriguez as New Jersey Public Advocate and again, he was the first Latino to hold that position in the state. In 1985, President Reagan appointed Judge Rodriguez to the United States District Court and he has since held that position with distinction. Ironically, it was Judge Rodriguez's decision to take senior status in 1998 which ultimately led to the appointment of Judge Fuentes, who was the first Latino to be named to the United States Court of Appeals for the Third Circuit.

Senator Robert Torricelli, upon learning of Judge Rodriguez's decision, forwarded Judge Fuentes' name to the White House as a candidate for the United States District Court. White House officials upon interviewing Judge Fuentes were so impressed that they vaulted his candidacy to the Circuit Court. Following his nomination by President William Jefferson Clinton and confirmation by the Senate, Judge Fuentes was sworn in as a Judge of the Third Circuit Court of Appeals on May 15, 2000.

As with Judge Rodriguez, Judge Fuentes' strength and determination were rooted in a strong familial background. Judge Fuentes was born on February 16, 1946, in Humacao, Puerto Rico. In 1950, Judge Fuentes' mother, Trinidad Mercado, brought the family from Puerto Rico and settled in the South Bronx. Five years later, a nursing job at a Lakehurst hospital led the single mother of two to pack up and move into a five-bedroom farmhouse crowded with cousins. A determination to provide for her family and to strive for better opportunities fueled Judge Fuentes' mother to work two jobs at a hospital and

nursing home. Through her hard work and commitment, the family was able to purchase and move to a home in Toms River.

Judge Fuentes attended Southern Illinois University for two years before serving in the military from 1966 to 1969. Judge Fuentes attended Officer Candidate School and served a tour of duty in the Canal Zone, Panama. Following his discharge as a First Lieutenant, Judge Fuentes returned to Southern Illinois University and received his Bachelor of Arts degree in 1971. Judge Fuentes went on to receive his Juris Doctor degree in 1975 from the University of New York at Buffalo Law School.

Judge Fuentes was admitted to practice law in 1975. He then became a member of the law firm of Miller, Hochman, Meyerson & Schaeffer in Jersey City. In 1977, Judge Fuentes started his own law firm, known as Fuentes, Plant & Velazquez, in Jersey City. However, shortly after the formation of his firm, Judge Fuentes was appointed by Newark Mayor Kenneth Gibson as a part-time municipal judge for Newark and went on to serve as a full-time municipal judge from 1982 until 1987.

In 1987, Governor Thomas Kean appointed Judge Fuentes to the New Jersey Superior Court, Essex County, where he served in all the major divisions: Family, Criminal, Civil and General Equity. In his eleven years on the state bench, Judge Fuentes steadily rose through the divisions serving for a short time as Presiding Civil Judge and subsequently as the Presiding Judge of the General Equity Division.

Judge Fuentes' meeting with White House officials went extremely well. In an article published by the New Jersey Law Journal, Senator Torricelli said, "[Judge Fuentes] received a virtual unanimous

recommendation from my judicial vetting committee, who was very impressed with him, as was the White House and me. The model for everything I was looking for is present in Judge Fuentes: self-made, out of Jersey City, works and had worked in Newark, a well-respected and accomplished jurist." Impressed with his undeniable credentials, President Clinton nominated Judge Fuentes for the Circuit Court in March 1999. His appointment was confirmed by the full Senate on March 7, 2000.

As the first foreign born federal judge in the District of New Jersey, and only the third in the nation to realize such a milestone, Judge Linares is a trailblazer in his own regard. As with Judge Rodriguez and Judge Fuentes, Judge Linares' commitment to excellence and his drive for success can be traced back to his family.

Judge Linares was born on November 30, 1953 in Havana, Cuba. During the now infamous Bay of Pigs invasion, Judge Linares' father, Jose Linares, Sr., was arrested by Fidel Castro's police. At that time Judge Linares was only seven years old. Castro had been rounding up thousands of suspected insurgents during the invasion, and Jose (a key figure in the anti-Castro underground) was swept up and jailed for his political activities and beliefs. One of Judge Linares' most poignant memories was accompanying his mother, Mercedes Linares, to El Morro Castle where his father was jailed. After being released from prison, Jose continued his insurgent activities, which included the harboring of a Bay of Pigs invader and C.I.A. cooperator at the family farm. This activity eventually led to new charges being leveled against Jose, who by then had fortunately fled the country with his pregnant wife and four children. Jose was tried in absentia by

Castro's Government and sentenced to death. Judge Linares' maternal uncle was also tried and sentenced to eighteen years in a Cuban labor camp.

The family arrived in the United States in August 1966 and settled in Newark. Jose and Mercedes went back to college and obtained their teaching and masters degrees. Both husband and wife taught in the Newark School District until their retirement. In addition to teaching, the Linares family became active in the community. In 1985, Jose launched a bid to become the first Hispanic in the New Jersey Assembly. Although his bid for the assembly was viewed as a long shot, the senior Linares campaigned vigorously. Although Jose was unsuccessful in the race, his drive and commitment empowered his son to reach for the stars and never give up.

Upon his graduation from Temple Law School in 1978, Judge Linares became an investigating attorney for the New York City Department of Investigation. In 1980, Judge Linares joined the law firm of Horowitz, Bross & Sinins in Newark, where he honed his skills as a litigator in both civil and criminal matters. In 1982, Judge Linares established his own law firm in Bloomfield. Throughout his distinguished career as a litigator, Judge Linares tried numerous complicated medical malpractice and products liability cases, which cemented his reputation as a well established and exceptional litigator.

On December 13, 2000, Governor Christine Todd Whitman appointed Judge Linares to the Superior Court in Essex County. During his short tenure on the state bench, Judge Linares gained respect as a jurist, became an Executive Judge in the Civil Division, and was entrusted to preside over complicated and substantial medical malpractice cases. Judge Linares

was nominated to the United States District Court for the District of New Jersey by President George W. Bush on August 8, 2002. His nomination was confirmed by the United States Senate on November 14, 2002 and his commission was signed by President Bush on December 3, 2002.

As the first foreign born to be a Federal District Court Judge in New Jersey's history, Judge Linares has a unique perspective on the journey to the federal bench. Having arrived in this country when he was only twelve years old, Judge Linares spoke no English. Through hard work and determination, Judge Linares achieved academic and professional excellence, and is a true role model for not just the Latino community, but

also the community at large.

The lives of each of these judges truly demonstrate the promise of America, and illustrate wholeheartedly the idea that insurmountable obstacles can be conquered through commitment, education and hard work. Along their journey, all of these men remained true to their roots and embraced their Latino ancestry. These men are testaments to what America is. As trailblazers, they each provide strength, hope and encouragement to those who have yet to accomplish their personal goals and aspirations, but yet dare to dream.

Sources available upon request.

## **THE OFFICE OF THE FEDERAL PUBLIC DEFENDER**

**By Judge Tonianne J. Bongiovanni**

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, . . . and to have the Assistance of Counsel for his defense."

Amendment VI.

The United States Constitution, from its inception, recognized that the assistance of counsel is fundamental and essential to a fair trial. Yet, it took nearly two centuries for the Supreme Court of the United States to recognize that this provision of the Bill of Rights is applicable to every indigent defendant in a criminal prosecution whether in state or federal court. In *Gideon v. Wainwright*, 372 U.S.

335 (1963), the Court laid to rest what had been a continuing source of controversy in both state and federal courts and returned to the old precedents and restored constitutional principles established to achieve a fair system of justice.

[R]eason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth.

Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in

an orderly society. . . . The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. . . . From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.

Perhaps heeding Justice Black's admonition, the Criminal Justice Act of 1964, codified in 18 U.S.C. § 3006A, was enacted which authorized the federal courts to establish a plan "for furnishing representation for any person financially unable to obtain adequate representation." Although New Jersey began an experimental public defender plan operating under court rule in Essex County under the sponsorship of the Essex County Bar Foundation in 1964, and a statewide public defender system operating from 1967, it was not until 1973 that the volume of cases warranted the creation of a Federal Public Defender Office.

Roger A. Lowenstein was appointed as the first Federal Public Defender and he selected as his First Assistant, John F. McMahon, a seasoned attorney in the Essex County Public Defenders Office. Lowenstein also enticed Thomas S. Higgins and John J. Hughes, Deputy Public Defenders in Essex County, to join his staff. Notably, in March 1991, Hughes, who was the Supervisor-in-Charge of the Trenton and Camden offices at the time, was appointed as a United States Magistrate Judge and presides in Trenton. Judge Hughes was the first career Assistant Federal Public Defender

in the country to be appointed as a United States Magistrate Judge. Following in Judge Hughes' footsteps, in April 2003, Tonianne J. Bongiovanni, who was the First Assistant Federal Public Defender, was sworn in as United States Magistrate Judge, also presiding in the Trenton vicinage. In June 1998, Peter V. Ryan, a former Assistant Federal Public Defender was appointed to the Superior Court bench in Essex County.

From its inception, the Office of the Federal Public Defender was staffed by skilled attorneys committed to the defense of their clients. As the late Vincent Biunno, District Judge opined,

The Federal Public Defender and his staff are highly competent and experienced in the defense of criminal cases, not only from their work in that office but in the New Jersey Public Defender's Office from which they were drawn. That system is the oldest and most experienced in the country, going back to 1963 on an experimental basis in Essex County, to a full-fledged statewide system since 1967.

After serving one term as the Federal Public Defender, Lowenstein, left the office and headed to Hollywood where he has created and written law-based shows for prime time television - no doubt drawing from his years of experience in the trenches of federal court. McMahon succeeded Lowenstein as the Federal Public Defender in September 1973, a position he held until retiring in January 1997. Under McMahon's tutelage, the

office grew from a handful of hearty souls to three fully staffed offices in New Jersey. When McMahon and First Assistant Thomas Higgins retired, the office employed forty-two full time employees in four locations: the Newark, Trenton and Camden vicinages as well as an office in Wilmington, Delaware.

Chester M. Keller, a longstanding attorney in the office, agreed to temporarily hold the position of Acting Federal Public Defender, while the United States Court of Appeals for the Third Circuit selected a successor to McMahon. With overwhelming support from the office, Richard Coughlin, who had been an Assistant in the office for twelve years, was officially appointed as Federal Public Defender on July 11, 1997. In May 2003, Coughlin was one of two Federal Public Defenders on a thirteen member Judicial Assessment Team consisting of judges, prosecutors and defense attorneys, sent to Iraq to evaluate the judicial system in an effort to assist the Coalition Provisional Authority in reconstructing the Iraqi court system. The coalition was successful in keeping the legal system in place during this tumultuous time while making important changes such as prohibiting the use of coerced confessions and establishing a suspect's right to counsel in all critical stages.

In response to the increase in the volume and nature of prosecutions, as of September 2003, the office operates under a Federal Public Defender, a First Assistant and nineteen Assistant Federal Public Defenders as well as three Research and Writing Attorneys. The office also staffs seven investigators, supervised by Chief Investigator Kevin Murphy, who was among the founding members who had migrated from the Essex County Public Defender's Office

when the Federal Defender Office was created. The main office for the Federal Public Defender organization is located in Newark with fully staffed branch offices in Trenton and Camden.

The Office of the Federal Public Defender is appointed by a federal judge to represent any person financially unable to obtain adequate representation who is charged with a felony or misdemeanor or who is the target of a grand jury investigation. The court's determination of indigence is based on the individual's financial circumstances as well as the crime charged. As a result, the background of the client is as diverse as the nature of the offense.

Generally, appointment of counsel is made at the initial proceeding and continues for the duration of the case whether it results in a trial or guilty plea and sentencing. The office continues its representation through the appellate process. Attorneys frequently represent clients before the Third Circuit Court of Appeals. A petition for a *writ of certiorari* is also filed in the Supreme Court of the United States if appropriate. Assistant Federal Public Defender Donald J. McCauley, had the privilege of arguing before this country's highest court on two occasions. On October 14, 1998, McCauley appeared before the Supreme Court to argue *Mosely v. United States* and on April 19, 2000, McCauley returned to Washington to argue *Carter v. United States*.

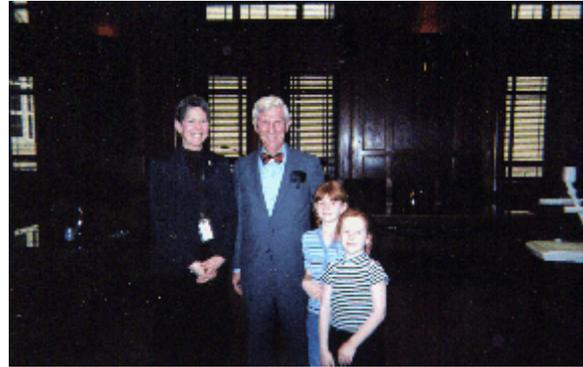
The Office of the Federal Public Defender is dedicated to providing effective, quality legal representation to indigent persons accused of federal crime and to ensuring that justice is administered to all persons on an equal basis, regardless of race, creed, national origin or socioeconomic status. It is a tremendous

honor and privilege to be given the opportunity and responsibility to follow the highest traditions of the legal profession. By working for justice and dignity for clients, public defenders protect the Constitution and the foundations of a diverse society. Public defenders do this often in spite of society's best efforts to undermine the rule of law in an effort to obtain some short term, expedient objective. This is a difficult but high calling that requires commitment, compassion and patience.

"It is remarkable that public defenders are able to establish effective lawyer-client relationships, notwithstanding widespread misgivings about both their abilities and institutional role. Yet, they manage to do so with all kinds of clients: the guilty and innocent, the sophisticated and naive, the hardened and vulnerable. Without a strong defense ethic, defenders could not establish a lawyer-client relationship built on trust and confidence, or frankly, any relationship at all." 11 Wash.U.J.L. & Pol'y 83.

Every citizen's right to access to the independent, private bar is itself an aspect of liberty that is of critical importance in our democracy. As Justice Stevens opined in *Walters v. Nat'l Ass'n Radiation Survivors*, 473 U.S. 305, 371, the independent lawyer is the guardian of our freedom.

Sources available upon request.



Great-granddaughters of Judge James A. Coolahan, who presided from 1961 to 1986, Taylor and Mollie, visit with Judges Katherine S. Hayden and William G. Bassler. They viewed Judge Coolahan's portrait, which is displayed in Judge Hayden's courtroom.

The Society congratulates Walter Towers, Michelle Smith, Irene Tosato, Edith Jazmin, Thomas Meisner, Stan Rizman, Robert McCaughey, Ellen Reader, Elaine Perrine and JoAnn Mattis for their years of service in the Clerk's Office on behalf of the Federal Family. We wish them health and happiness in their retirement.

The Society is grateful to Robert E. Bartkus, Esq. who devoted tireless service to *Nunc Pro Tunc* as its Editor.

**Members of The Historical Society of the  
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this year.