

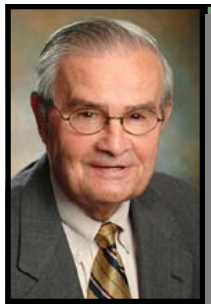


THE HISTORICAL SOCIETY OF  
THE UNITED STATES DISTRICT  
COURT FOR  
THE DISTRICT OF NEW JERSEY

January 2005

Volume VII, Issue 2

# NUNC PRO TUNC



## Message From Our President

The Judges and lawyers involved in the activities of our Society are, as our beloved Chief Judge Gerry (1925-1995) eloquently said in 1991, only temporary custodians of the proud traditions of our Court. Those traditions began 215 years ago when our first Judge, David Brearley, convened the first session of the Court in 1790. Since then our Court's history has been in the custody of 75 District

Judges, 25 Magistrate Judges, 26 Bankruptcy Judges and thousands of lawyers. Today, our Society's members are fulfilling their duty to reach beyond ourselves, as Judge Gerry urged, in the service of the Court.

Here is what we have been and will be doing:

- A few weeks ago, we conducted our first swearing-in ceremony for new lawyers in

Camden and Newark. We hope to do this each year.

- Recently, as a tribute to our Judge and lawyer members, we held a festive reception while unveiling a reproduction of the first seal of the Court.
- On April 21, 2005, we will be celebrating our Annual Gala. This time it will be held in Camden to honor Senior Judge Stanley Brotman, who has been on the bench for 30 years.

(see ROBINSON on page 2)

## Inside this issue:

Message from the President	1
Society honors Judge Brotman	1
U.S. Attorney-a brief history	2
The Second Lindbergh Kidnapping	3

## Society to Honor Judge Brotman

On April 21, 2005 the Historical Society will hold a Gala in the Camden Courthouse commemorating Judge Stanley Brotman's 30 years on the Federal Bench here in New Jersey. Judge Brotman has had an unprecedented career on the bench. His story is highlighted in this first of two articles

### Did you know...

- Judges Brotman and Bassler have held the position first held by NJ's first federal judge, David Brearley
- William S. Pennington served as a judge and his son William Pennington was the Clerk of the Court.
- Richard Stockton became New Jersey's first United States Attorney at the ripe old age of 25!

### A Brilliant Career By Thea Parent, law clerk to Judge Brotman

United States District Judge Stanley Brotman inherited a special legacy from his grandfather, Abraham Brotman. As a young immigrant Abraham established a coat factory in Brooklyn, New York, and not long thereafter, was struck by an idealistic desire. He moved his factory to a tract of land in Southern New Jersey, and attracted a small number of immigrant



Honorable Stanley S. Brotman

families to the new town of Brotmanville. The shared dream of these newcomers was to escape the tyranny of Europe and to own land in America. The factory provided the wages to realize their goals. Underwrit-

ten by the Baron de Hirsch Fund and a handful of other philanthropists, they established a nurturing community in which to raise children and lead productive lives.

Judge Brotman was impressed by his grandfather's example of daring and his restless drive to build. Long after the factory had closed and Abraham had moved to Vineland, his compulsion persisted to plan neighborhoods and build homes with his trademark, a pair of stone posts at the entrance to the driveways. His grandson

(See BROTMAN, page 3)



**ROBINSON**

Continued from page 1

- Through the efforts of Board member Doug Arpert, we are arranging for a trip to the Supreme Court of the United States to swear in a group of our members in November 7, 2005.
- Our long awaited formal history of the Court entitled, "***This Honorable Court***", is in the hands of a publisher following four years of extensive research and writing. The publisher has promised a Fall 2005 publication.
- We publish a newsletter aptly entitled ***Nunc Pro Tunc***.
- Judge Hedges continues to collect historical materials for our ar-

chives and for public display.

We are proud of these completed projects:

- Restoration and placement of the Eagle at the Martin Luther King Jr., Courthouse.
- The 3 lawyer lounges in each vicinage.
- The exhibits in each vicinage Courthouse.
- On the 50<sup>th</sup> Anniversary of Brown v. Board of Education, we conducted a program of distinguished panelists that included Judge Robert L. Carter, who argued that historic case.

We encourage participation from our federal bar and are actively recruiting new members. Please help our beloved Society thrive.



## The United States Attorney ...a brief history

**By Patty Schwartz,  
United States Magistrate  
Judge**

The Judiciary Act of 1789 may be best known for establishing the federal judiciary, but it also created another post. The Judiciary Act specifically provided for the appointment in each judicial district of a "person learned in the law to act as attorney for the United States . . . whose duty it shall be to prosecute in each district all delinquents for crimes and offences, cognizable under the authority of the United States, and all civil actions

in which the United States shall be concerned . . . ." The statute did not provide a title for these public servants, but subsequent statutes and cases frequently referred to them as "district attorneys." In 1948, the Judicial Code formally adopted the term "United States Attorney."

An early draft of the Judiciary Act authorized district judges to appoint United States Attorneys, but the final version of the Act failed to provide explicit appointment authority. Thus, this power rests with the President, with each

nomination subject to the confirmation of the United States Senate. These early officials, working without the aid of full-time Assistant United States Attorneys, operated virtually autonomously representing the federal government in matters within their own district. Until 1861, the Attorney General had no supervisory authority over the United States Attorneys and had no role in district activities. Rather, the Attorney General's duties were limited to handling matters in the United States Supreme Court and serving as counsel to the President and Department heads. The Secretary of State and, subsequently, the Solicitor of the Treasury oversaw the activities of the United States Attorneys. In 1861, Congress enacted legislation that delegated to the Attorney General "general superintendence and direction duties" over United States Attorneys.

In 1870, Congress created the Department of Justice ["DOJ"]. Under the "Act to Establish the Department of Justice" ["the 1870 Act"], Congress sought to unify the national legal agencies and assist United States Attorneys in handling the explosion of post-Civil War litigation involving the United States. The 1870 Act named the Attorney General head of DOJ, created the Office of the Solicitor General (the federal government's attorney who handles matters before the United States Supreme Court), and gave DOJ control over federal

law enforcement.

The 1870 Act, together with legislation in 1896 and 1906, granted the Attorney General authority to supervise criminal and civil proceedings in all districts. Thus, the days of the United States Attorneys' complete autonomy ended. Being part of a unified system, however, provided benefits. For example, the 1896 reforms provided for the appointment of Assistant United States Attorneys and established a



**Richard Stockton**  
1st US Attorney

fixed-salary structure. Before 1896, the compensation structure of United States Attorneys resembled that of private attorneys. Rather than receiving a standard salary, they were compensated by retaining a percentage of recoveries. Under this funding arrangement, early United States Attorneys were able, and financially needed, to operate private practices. Indeed, a review of reported cases involving United States Attorneys in New Jersey reveals that those individuals were actively litigating matters on behalf of private parties. Concern that this method

(See US ATTORNEY, page 4)

## Brotman

Continued from page 1

grew up believing that a man should take chances in pursuit of constructive goals.

On December 7, 1941, Japan attacked Pearl Harbor, and in 1942, when he was eighteen years old, Stanley Brotman interrupted his college education to join the United States Army. He was part of a highly motivated generation of young Americans who enlisted. After basic training, Brotman was selected to participate in the Army Specialized Training Program and was sent to Yale University for language training. He was one of seventeen soldiers taught to speak, read and write Burmese. They also studied the political, economic and social background of the countries of Southeast Asia and China.

Before he was sent to Burma, (now known as Myanmar), Brotman was assigned to the Horse Cavalry in Ft. Riley, Kansas where he received intensive instruction that included challenging obstacle courses. The strategic thinking was that horses would be needed for the Burma terrain. Once in Burma, however, Brotman was given a jeep! Initially attached to the Counter-Intelligence Corps, he was subsequently transferred to the Office of Strategic Service (OSS), Detachment 101. Ultimately, his unit received a Presidential Unit Citation for Outstanding Performance. He served until 1945 and then re-

turned to complete his undergraduate studies at Yale.

As a child, Judge Brotman wanted to become a lawyer to emulate his favorite uncle, Aaron Brotman, who had died at the age of twenty-nine. Brotman earned his L.L.B. degree at the Harvard Law School in 1950, and was admitted to the New Jersey Bar in November of that year. His plans to practice law were postponed when



he was recalled for active duty in 1951 as a military intelligence officer during the Korean Campaign. He served with the Armed Forces Security Agency in Washington, D.C., where he was joined by his bride, Suzanne. Wasting no off-duty time, he took another Bar Exam and became a member of the D.C. Bar, a membership he still maintains.

In May of 1952, Brotman returned to his hometown and opened a solo law practice. In 1957, he joined Samuel L. Shapiro in a partnership which grew into the firm of Shapiro, Brotman, Eisenstat and Capizola. After 23 years in the general practice of law,

on the recommendation of Senator Clifford Case, Brotman was appointed to the District Court for the District of New Jersey in Camden by President Gerald Ford, in 1975. Since 1980, in addition to his duties in New Jersey, Judge Brotman has also been temporarily designated by the Third Circuit to serve on the District Court of the Virgin Islands to render assistance as may be required from time to time. The assignment continues to date.

In September 1989, Judge Brotman, his court reporter and a law clerk were on St. Croix when it suffered a sixteen-hour direct hit from Hurricane Hugo. Two days later they were located and evacuated to Miami and then home. Though St. Croix was 80 percent devastated and without electricity, telephones or drinking water, within 36 hours the Judge returned to assist in reopening the Courts in St. Croix and St. Thomas. It was essential to reestablish a Federal Judicial presence as soon as possible to assure the people that they were protected and not forgotten.

Three months later, Chief Judge David O'Brien succumbed to cancer, and Judge Brotman was appointed by the Third Circuit as Acting Chief Judge to replace him. Keeping a promise made to Judge O'Brien, Judge Brotman helped oversee construction of a new Courthouse on St. Croix in 1991, a project Judge O'Brien had conceived and for which he

had worked tirelessly for many years. Judge Brotman served as Acting Chief from December 1989 to August of 1992, when the President named a permanent local resident to the vacancy.

***Though St. Croix was 80 percent devastated and without electricity, ... within 36 hours the Judge returned to assist in reopening the Courts in St. Croix and St. Thomas***

In 1990 Congress enacted the Civil Justice Reform Act which mandated that each Judicial District produce a Civil Justice Expense and Delay Reduction Plan. Under the direction of Judge Brotman, a committee was appointed in the District of the Virgin Islands consisting of the two magistrate judges, representatives of the bar, and members of the community at large. Judge Brotman was able to obtain funding to hire William Slate, former Third Circuit Executive, as an expert advisor to the committee. The committee wrote a complete case management evaluation which proposed updating of local civil, criminal, bankruptcy and admiralty rules, as well as arbitration and mediation procedures. The District of the Virgin Islands became one of the first 25 districts in the nation to be recognized as an Early Imple-

(See **BROTMAN**, page 4)





**BROTMAN**

Continued from page 3

mentation District.

When Judge Brotman recalls his 23 years of service in the Virgin Islands, his concern and affection for its people become apparent. From the day he arrived, the Judge had the invaluable cooperation of Magistrate Judges Geoffrey Barnard and Jeff Resnick, and the Clerk of the Court, Orinn Arnold. In addition, the efforts put forth by the court personnel in both St. Croix and St. Thomas were outstanding. The Judge looks on his experience in the Virgin Islands as a source of deep satisfaction.



**The “Second”**

**Lindbergh Kidnapping**

by Jessica M. Mayer

How is this for starters...famous New Jersey names: Schwarzkopf, Lindbergh, Wilentz...two United States Attorneys, two New Jersey Governors, four New Jersey federal district judges, one third circuit judge...all linked together in one of the longest and most jurisdictionally convoluted federal cases New Jersey has ever seen.

Most are probably familiar with the Lindbergh baby kidnapping, but only a few will remember the subsequent legal tug of war that resulted among four New Jersey district court judges and a state court from New York.

The Lindbergh case had two kidnappings. First and

(See **PARKER** on page 5)

**US ATTORNEY**

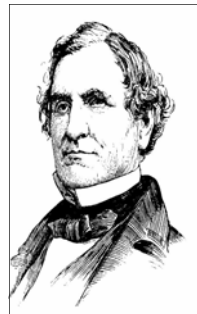
Continued from page 2

of compensation encouraged vexatious litigation, the Attorney General imposed a fixed salary system based on caseloads.

The United States Attorneys, as the chief federal law enforcement officers in their districts, always have been responsible for enforcing federal criminal laws and representing the United States in civil actions. Early United States Attorneys, however, had additional duties. For instance, they were required to report on the nature of the federal judicial docket, they were authorized to transfer cases between the former circuit courts and district courts, and they were permitted to select United States Commissioners (the predecessors to the United States Magistrate Judges) to handle initial appearances for those arrested for certain offenses. Today, the Administrative Office of the U.S. Courts gathers docket reports, the former circuit courts do not exist, and United States District Judges select United States Magistrate Judges.

These duties, however, were replaced with other tasks that DOJ assigned. For example, DOJ has required local United States Attorneys to carry out various initiatives that an Attorney General wished to pursue in response to specific crime problems. For instance, in the 1960s, the Attorney General established organized crime strike forces in various parts of the United States, which originally acted separate from United

States Attorneys and focused on traditional organized crime within designated regions that covered multiple districts. The strike forces were later merged into United States Attorney's Offices and their focuses were expanded to address nontraditional organized crime. In the



William S. Pennington  
US Attorney 1802-1803

1980s, the United States Attorney's became soldiers in the war on drugs and additional personnel were hired to handle complex national and international drug cases. In response to the national savings and loan crisis, United States Attorneys utilized criminal and civil resources to prosecute fraudsters and forfeit their ill-gotten gains. When local law enforcement asked the federal government to help combat the rising violent crime rates in the 1990s, the Attorney General directed United States Attorneys to apply manpower to prosecute firearms offenses. Following the tragic events of September 11, 2001, United States Attorneys received additional resources to fight terrorism. Thus, the growth of the United States Attorneys' Offices and their workload over the last 40 years re-

sulted, in part, from the Attorney General's response to current events.

Although the supervisory authority of the Attorney General allows him to direct the implementation of specific initiatives, United States Attorneys retain discretion to use their resources to address the needs of their districts. As a result, caseloads vary considerably among the 93 judicial districts. In addition, United States Attorneys retain full authority to control personnel, finances, and procurement based upon each office's individual budget. Thus, the current structure of coordination between the DOJ and the United States Attorneys results in a system under which both national priorities and local concerns are addressed under the auspices of the United States Attorney.

These increased duties are performed through a growing arsenal of federal statutes. For instance, the number of federally prosecutable crimes has grown from 115 in 1975 to over 3000 in 2003. The role of the federal prosecutor has also grown to include significant participation in the investigative phase of civil, criminal, and intelligence matters.

Regardless of the role or decade, the United States Attorneys and their assistants have always been held to a higher standard than other attorneys who appears before the Court. The reason is clear: "the United States Attorney is the representative not of an ordinary party to a controversy, but of a sover-

(See **US ATTY** page 5)

**U S ATTY**

continued from page 4

eighty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interests, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.

*Berger v. United States*, 295 U.S. 78, 88 (1935).

The proud history of the United States Attorney for the District of New Jersey reflects an embodiment of this standard. Fifty-four

*Of the 55 United States Attorneys, six of them, William Pennington, Frederick Lacy, Herbert Stern, Samuel Alito, Michael Chertoff and Faith Hochberg, have served as federal judges*

men and one woman have served as the United States Attorney for the District of New Jersey during its 215 year history, and hundreds of people have served as Assistant United States Attorneys and members of the support staff.

Richard Stockton, the son of a signer of the Declaration of Independence, was President Washington's choice to serve as New Jersey's first federal district attorney. Maritime and custom duty issues occupied the time Mr. Stockton devoted to this position. Following Mr. Stockton's two years as United States Attorney, President John Adams nominated a member of the Frelinghuysen family, Frederick Frelinghuysen, to serve as United States At-

torney. On March 26, 1861, Anthony Keasbey began his tenure as the longest serving United States Attorney, holding the position for 25 years. A 1898 reported decision suggests that the first New Jersey resident to have the three words, "United States Attorney," to actually follow his name was J. Kearney Rice, who served from 1896-1900. Two sets of brothers, Richard Stockton and Lucius Horatio Stockton in the 18<sup>th</sup> Century, and Raymond Del Tufo, Jr., and Robert Del Tufo in the 20<sup>th</sup> Century, served as United States Attorneys in New Jersey. Of the 55 United States Attorneys, six of them, William Pennington, Frederick Lacy, Herbert Stern, Samuel Alito, Michael Chertoff and Faith Hochberg, have served as federal judges. The 54<sup>th</sup> United States Attorney for the District of New Jersey, Robert Cleary, occupies a unique place in the District's history as he also served as the United States Attorney for the Southern District of Illinois. Other former United States Attorneys had great success in the private sector and served in Congress, as Attorney General for the State of New Jersey, as members of the state legislature, as Judges of the New Jersey Superior Court and as Justices of the New Jersey Supreme Court.

The 215 year history of the United States District Court and the United States Attorney's Office for the District of New Jersey is marked by expansion.

The number of active district judges has increased from one to seventeen and the number of attorneys working for the United States Attorney has grown from one to more than 130. When the Court convened for its first session involving the United States Attorney on December 22, 1789, the only business before the Court was the swearing in of three attorneys. Today, the United States Attorney is the most frequent litigant in federal court, handling hundreds of criminal and civil cases for the United States. Yesterday's United States Attorney pursued cases involving customs duties, counterfeiting, and bank robbery. Today's United States Attorney confronts issues of local, national and global concern, from violent crime to terrorism, and political corruption to corporate fraud. Today's United States Attorney receives a fixed salary. One can only imagine the reaction of yesterday's United States Attorneys, who were compensated based upon recoveries, if they knew that the Civil Division of the United States Attorney's Office in New Jersey recovers more than \$100 million annually and the United States Attorney has authority over a multimillion dollar budget!

Times may have changed but all of these activities have occurred in the context of a rich history of service to the people of the District of New Jersey and United States.

**PARKER**

Continued from page 4

most obvious was the kidnapping of the Lindbergh's child and the subsequent murder. Second, and the focus of this article, was the kidnapping of Paul H. Wendel, a disbarred New Jersey lawyer who was tortured and forced into



**Ellis Parker, Sr.**

confessing to the Lindbergh kidnapping.

In the center of this story is Ellis Parker, Sr. He worked as a detective for Burlington County for 46 years. To some, he was called the "greatest detective in the world," and to others, the "Sherlock Holmes of America. Other counties in New Jersey would come to Parker for advice on tough cases, and his fame spread to other states and even other countries. Unfortunately for Parker, the state didn't seek his help in the Lindbergh case.

When the Lindbergh baby was kidnapped, NJ State Police Colonel Norman Schwarzkopf was put in charge of the investigation. The state police had recently been created and when Parker was not asked to assist in the in-

(See **PARKER** on page 6)

## Editor: Frances C. Bajada

Send your comments to:  
frances\_bajada@njdcourts.gov  
v

Visit our website at  
[www.history.njd.uscourts.gov](http://www.history.njd.uscourts.gov)

### Our Officers

President: Donald Robinson  
Treasurer: Sean Kelley  
Exec. Director: Susan Travis  
Of Counsel: Eugene Haring  
Beth Yingling



#### **PARKER**

continued from page 5

investigation, he was obviously insulted. Parker let it be known, both privately and publicly, that he did not believe the investigation and subsequent conviction of Hauptman for the kidnapping was done with particular skill or accuracy.

Then Governor Harold G. Hoffman, a friend of Parker's, also was convinced of Hauptman's innocence and authorized Parker to begin a separate investigation.

Parker, known for some coercive and unconventional investigative methods in his past, organized a group of men coordinated by his son, Ellis Parker, Jr. to detain and torture Wendel. He had been taken outside his hotel in Manhattan and brought to a house in Brooklyn. He was kept there in the cellar

for a week being beaten and tortured until he gave his coerced confession. Oddly enough, Wendel had considered himself a friend of Parker's and didn't realize until later that Parker had been behind his kidnapping all along. Wendel was then moved to New Jersey where a longer confession was extracted from him after finally meeting with Parker himself.

Confession in hand, Parker turned Wendel over to David T. Wilentz, Attorney General of NJ, who was the prosecuting attorney for the original kidnapping trial. Wendel's "confession" caused a three-day delay of the execution of Bruno Richard Hauptmann, the man convicted of murdering the Lindbergh baby. As soon as he was in custody, Wendel told of his own kidnapping and torture. The grand jury refused to believe that his confession was real. The execution of Hauptman was carried out and the investigation and eventual prosecution of the Parkers ensued.

First up was the indictment of the Parkers along with their accomplices in a Brooklyn state court. When the Brooklyn District Attorney, William Geoghan, tried to extradite Parker, Sr., Governor Hoffman refused. The federal grand jury sitting in Newark then took up the charge. They had met several times to consider an indictment of Parker but were delayed because they were unsure of a cause of action. When they became convinced that he had been taken

from Brooklyn to New Jersey against his will, they ironically indicted him under the statute then known

*Judge Avis ordered that if the warrant was served that Parker should not appear in front of Judge Clark but be brought before him*

as the "Lindbergh Law" which proscribed transporting a kidnapped person across state lines.

Defendants Ellis Parker, Sr., and Ellis Parker, Jr. were represented by former N.J. Governor George S. Silzer. The prosecution was handled by US District Attorney John J. Quinn

The Parker case had so many jurisdictional twists and turns that it seemed impossible to predict where the case would eventually be prosecuted. Silzer filed initial jurisdictional motions with Judge Guy L. Fake in Newark to no avail. Meanwhile, Judge William Clark had issued a bench warrant for Parker when he failed to appear in Newark for extradition hearings. Silzer traveled to Camden to argue for a restraining order that Parker must be delivered to the nearest Federal Judge if the warrant is served. Judge Avis ordered that if the warrant was served that Parker should not appear in front of Judge Clark but be brought before him. A week later he rescinded his order stating that New Jersey was one district and he could be brought before any judge.

Siltzer then proceeded to Trenton to request Judge Forman have the venue changed to South Jersey where Parker lived. This was denied. Instead of appealing Judge Forman, he proceed back to Newark to request Judge Clark to move the case to Burlington. Changing his mind, Silzer filed an appeal of Judge Forman's ruling to Circuit Judge J. Whittaker Thompson, who restrained Quinn from trying the case in Newark. Judge Thompson ordered the lawyers on both the defense and the prosecution to appear before the Third Circuit Court of Appeals to present each side. On April 14, 1937, after hearing of this appeal, Quinn went to Attorney General Homer Cummings for permission to move the Parkers to Brooklyn Federal Court. Silzer reconsidered, not wanting his client to be tried in Brooklyn and gave up the jurisdictional fight and withdrew his appeal. The trial was held in Newark and the Parkers were convicted on June 24<sup>th</sup>, 1937. Both Parkers were found guilty of conspiracy; Parker, Sr. was sentenced six years in prison and Parker, Jr. was sentenced 3 years. Parker Sr. died in prison while his Presidential pardon was being processed.

### *...a Special Thank You*

Thank you to Stephen M. Greenberg, Esq., CEO of Net2Phone, Inc. an affiliate of IDT, and NJPAC for their sponsorship of our 50th Anniversary of Brown v Board of Education program.