



NUNC PRO TUNC

Inside This Issue:

Message From Our President, Douglas Arpert	1
District Judge Susan Wigenton, Newly Appointed, Not New To The Bench	1
Themis, The Greek Goddess Of Justice	2
David Satz, Former U.S. Attorney	4
Lady Justice, A Tumultuous History	6
Thomas Lowry, Patriot, Businessman And Politician	9

Dear Members and Prospective Members,

I am happy to report that the state of our Society is strong. Our membership is growing, attendance at our events has been outstanding, and our Officers and Directors are enthusiastic and engaged. We are grateful for the support and encouragement the Society receives from Chief Judge Brown and all of the District's judicial officers and personnel.

Recent events have included sponsorship of group admission to the Supreme Court of the U.S., a judicial reception where Society members have an opportunity to meet our District Judges, Magistrate Judges and their staffs, and in December we co-sponsored two events at which over 200 new attorneys were admitted.

We have a number of exciting new projects underway including redesigning the lighting of the Lady Justice sculpture in the Lautenberg Courthouse as well as the restoration and display of several WPA era murals in Trenton and Newark. Of course, we continue to maintain permanent displays in each of the three Courthouses as well as an ongoing archives project. This spring, we are having our first annual Chairman's Ball, a fabulous social event for our members and friends. Keep your eyes open for details and sign up early as tickets for this outing will be limited.

As we look forward to continued growth and success, we ask you to do three things: (1) renew your annual membership; (2) attend our events; and (3) encourage your friends and colleagues to join the Society.

We look forward to seeing you soon!

Sincerely, Douglas Arpert



The Honorable Susan D. Wigenton, U.S.D.J.

By: Monica de los Rios

On October 12, 2006, the Honorable Susan D. Wigenton, U.S.D.J. was ceremoniously sworn in as a District Judge for the District of New Jersey. She was nominated by President George W. Bush on January 25, 2006, to a seat vacated by John W. Bissell. She was confirmed by the Senate on May 26, 2006 and received commission on June 12, 2006. Judge Wigenton was no novice to the federal bench, as she had served as a full time United States Magistrate Judge



for the District of New Jersey from 2000 - 2006 and prior to that time served as part-time magistrate judge from November 1997 until October 2000. She was the first African American in New Jersey to serve as a United States Magistrate Judge in the District of New Jersey and is the 4th African American District Judge to be appointed in New Jersey.

Judge Wigenton graduated from Norfolk State University, located in Norfolk, Virginia, in 1984 with a bachelor's degree in political science. She then obtained her juris doctorate from the College of William & Mary, Marshall-Wythe School of Law, Williamsburg, Virginia in 1987. Upon graduation she returned to New Jersey and clerked for the Honorable Lawrence M. Lawson, P.J.S.C. in Monmouth County. She joined the law firm of Giordano, Halleran & Ciesla in 1989 as an associate and became partner in 1996. During that time, she graded bar exams for the State of New Jersey Board of Bar Examiners and also served as the Public Defender for the City of Asbury Park from 1989 until 1993.

During her career, she has received numerous awards and citations, which include: Woman of Distinction Award, Monmouth Council of Girl Scouts; Women Lawyers in Monmouth Achievement Award; Long Branch NAACP Presidential Award; Martin Luther King Champions For Social Justice and Equality Award, Rutgers Law School (Camden); The Association of Black Women Lawyers of New Jersey Distinguished Member of the Legal Community Award; W.E.B. DuBois Citation for Merit; and National Association For Educational Opportunity Distinguished Alumni Award. She is also a member of the Delta Sigma Theta Sorority, Inc.

She is married to Kevin P. Wigenton, Esq., who is engaged in private practice in Red Bank, New Jersey. They have one son, Kevin P. Wigenton, II, who is currently 4 years old.

Justice May Be Blindfolded, But Her Vision Is Clear

By: Sheea T. Sybblis

Larger than life, the eleven-foot cast concrete sculpture, fondly referred to as "The Head," has been noted by all who enter the plaza of the Martin Luther King Federal Building and U.S. Courthouse in Newark, New Jersey. The sculpture is a depiction of the head of Themis, the Greek goddess of Justice. It is clearly the dominant figure outside the Newark courthouse. The head rises from the earth, as if the enormous body of the goddess will soon follow.

The sculptural representation of Themis has a special meaning to our justice system because of its root in Greek mythology and ancient civilizations. Themis, a Titan, was the Greek goddess of divine law. Themis was the embodiment of order and established law. She represented the law of nature and custom. Themis was the first to instruct mankind in the primal laws of justice and morality, including the principals of piety, the rules of hospitality and concepts of good governance.

In addition to also being the goddess of prophecy and the guardian of oaths, Themis was associated with wisdom and good counsel. Themis sat beside Zeus, the king of the gods, to offer advice. She judged whether the dead went to Tartarus, the place of ultimate punishment and eternal torment, or the Elysian Fields, the abode of the blessed, and was often depicted as blindfolded to be impartial. In ancient Greece, judges were often referred to as *themistopoi*, meaning the servants of Themis.

Dike was the daughter of Themis and Zeus. Themis and Dike were both Greek goddesses associated

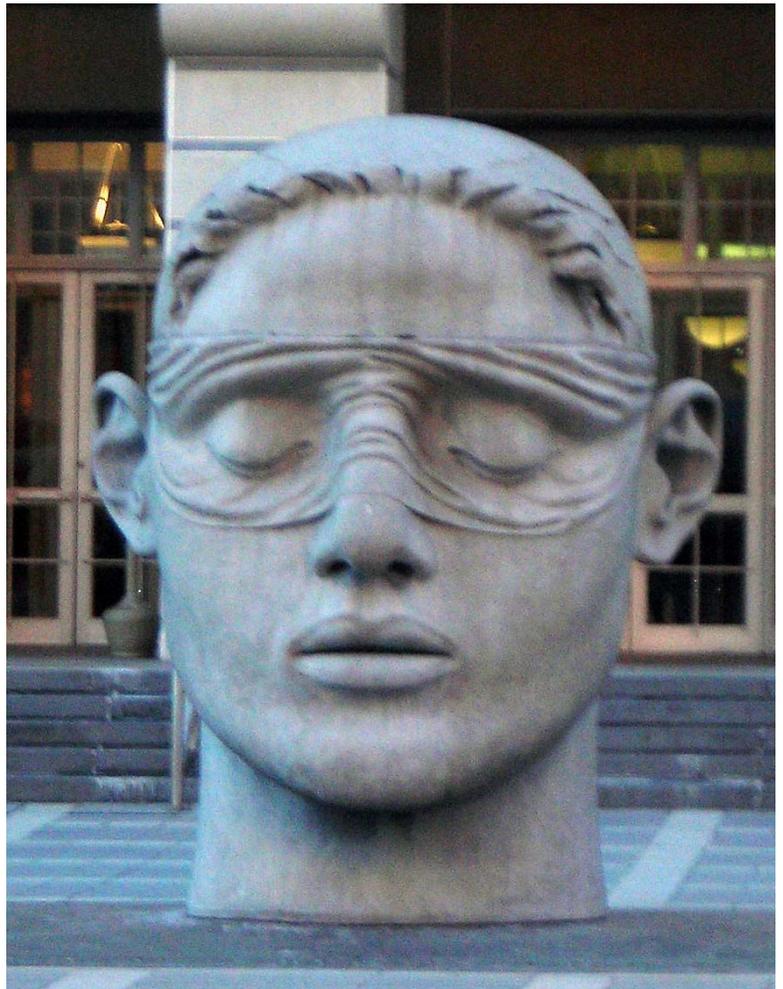
with justice. However, Dike was the Greek goddess of justice for humanity, while her mother, Themis, was the goddess of divine justice. Dike presided over the apportionment of things among mortals, the protection of individuals and the keeping of social and political order. According to Greek mythology Dike was born a mortal and Zeus placed her on earth to keep mankind just. Sadly, Zeus realized that this task was impossible and placed Dike next to him on Olympus, home of the gods. In some versions of Greek mythology Dike is said to have retreated by stages from an increasingly violent world that would not follow her laws, but yet she never truly left the earth.

The Roman goddess equated with Themis is Iustitia or Justitia, who was the personification of justice. In Roman mythology, Justitia (or Justice) was one of the four Virtues. The others were Prudence, Fortitude, and Temperance. Portrayals of Lady Justice are often a blend of Themis and Justitia, as well as Dike. Though there are several variations, Themis was said to carry the scales of divine justice, while Dike was often described holding a balance and occasionally a sword. Justitia was depicted with a sword and scales.

Today one of the most recognized legal symbols is that of "Justice." In the United States, Justice is most commonly portrayed as a blindfolded woman carrying a sword and a set of scales. The blindfold with which Justice is now associated, became prominent around the 16th century. Due to the fact that blindfolds were commonly worn by the blind, some assume Lady Justice herself is blind. The blindfold indicates that justice must be meted out objectively, without favor, regardless of the identity, power or weakness of the individuals whose fate is to be decided. Justice is often depicted blindfolded to suggest impartiality, but this limitation of her vision is ironic as she was believed to have the gift of foresight. Themis, was in fact, known for her "clear-sightedness."

In more recent times, representations of Themis, symbolize the fair and equal administration of the law, without corruption, greed, prejudice or favor. Artist Diana Moore's depiction of the head of Themis at the Newark courthouse is powerful in its simplicity and integrates a bold symbol of justice into the community. Moore's sculpture of Themis was commissioned by the U.S. General Services Administration's (GSA) Art-in-Architecture Program. Moore has completed three major federal commissions for the Art-in-Architecture program, including the monumental concrete head of Themis that graces the plaza of the Newark courthouse. She was also responsible for the creation of two seven foot tall Urns of Justice by the entry to the Federal Courthouse in Lafayette, Louisiana and a nine foot tall stainless steel figure of Justice that stands in the Warren B. Rudman Federal Courthouse in Concord, New Hampshire. Moore received the GSA Design Awards for sculpture for all three of these projects.

Moore, known for her public works, makes figurative sculptures from contemporary building materials such as cast carbon steel and concrete. Her art addresses timeless issues of form and



beauty. She has been inspired by classical renditions of the human form found in sculpture from many cultures around the world, including the ancient Greek, African and Cambodian. When creating the sculpture of the head of Themis, Moore was also influenced, in part, by the *Colossal Head of Constantine*, which she saw in a Roman museum in 1978, as well as African masks, Olmec statues, and Buddha figures.

Judge Trump Barry, who played an *ex officio* role to the committee selecting the sculpture of the head of Themis, believes that the committee wanted to make sure that the piece that graced the plaza was representative of all the diverse people that come into the court. Most would agree that the sculpture accomplished this goal and more. With smooth clear lines and distinguished features, the sculpture seems reminiscent of a multitude of cultures. The sculpture encourages people to have faith in the strength and integrity of our legal system. While representing the moral force that underlies our legal system, Moore's sculpture of the head of Themis embodies the essential concepts of justice and impartiality. The massive head is of godlike proportions. It makes a powerful statement about our legal system and acknowledges the enormous task and responsibility the court has to be just.

Moore's piece is accompanied by a poem written by Mark Strand, Poet Laureate for 1990-1991, that appears on the granite base of the sculpture. The poem reads, "When justice does its public part, it educates the human heart, the erring human heart, in turn, must do its private part and learn." These words resonate in the minds and hearts of those who have taken a moment or two to read them. They remind mankind of its role in maintaining justice. The bold representation of Themis, with covered eyes that seem to see into the souls of men, is adorned by the words of wisdom that challenge us as human beings to continue to evolve.

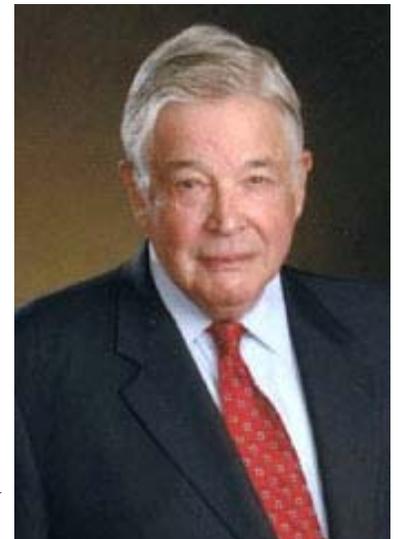
David M. Satz: "The Great Communicator"

By: Elie Mischel, Student at the Benjamin Cardozo School of Law

It was mid-July, 1967, and the streets of Newark were eerily silent, broken only by the sound of sporadic gunfire. The first two days of rioting had passed, and the looting of storefronts and damage to property gave way to violence that led to the death of twenty-six people. Angry members of Newark's disenfranchised African American community and the National Guard squared off against each other in a hopeless standoff as the city became an armed camp. The situation, in short, was grim.

As the race riots continued, David M. Satz, United States Attorney for New Jersey, devised a plan to bring an end to the conflict. As employees of the federal government, the United States Attorney's Office was considered a neutral party by both sides during the riots. Satz, together with his subordinates, capitalized on the Office's neutral image and convinced leading members of both sides to meet together at the federal building. As a result of this meeting, Richard Hughes, the governor, and Paul Ylvisaker, head of the New Jersey Office of Community Affairs, reached an agreement with Tom Hayden and Bob Curvin, two of the city's leading Civil Rights activists, to call off the bloodshed and end the riots.

As the United States Attorney for the New Jersey District from 1961 to 1969, David Satz served the people of New Jersey during one of the more tumultuous decades in its history. A graduate of the University of Pennsylvania Law School in 1951, Satz spent about three years in private practice before entering public service as First Assistant Attorney General for the State of New Jersey. While working in the Attorney General's office, Satz struggled to develop an attitude of collaboration among the various state law enforcement agencies, a goal he would continue to pursue on the federal level when he became the United States Attorney





in New Jersey. As First Assistant, Satz represented the State on numerous hot button issues such as Sunday “Blue laws” and railroad strikes.

Satz was appointed United States Attorney in 1961 at the start of the Kennedy administration. He soon found himself at the head of an overextended staff consisting of only eighteen Assistant U.S. Attorneys, a small fraction of the number of lawyers working in the U.S. Attorney’s office today. The majority of these lawyers, divided into civil and criminal divisions, worked in separate areas on the fourth floor of the federal building in Newark, with the rest working from Camden and Trenton. The AUSAs were unable to specialize in any one field, as the shortage of manpower forced every attorney to be capable of working on many kinds of cases.

Satz’s office handled a varied caseload of civil and criminal cases, but it broke new ground in the criminal arena. In the 1960’s, the federal government finally began to systematically crack down on organized crime, and Satz’s Office became one of the districts spearheading those efforts. Satz quickly discovered, however, that the lack of communication between the various federal agencies and his own Office made the development of cases against members of organized crime that much more difficult. The FBI, for example, refused to share its weekly organized crime reports with Satz’s office, who often learned of relevant information for the first time from newspapers! One of Satz’s most significant accomplishments over his eight years in office consisted of breaching the walls that existed between the various federal agencies and offices.

Satz supervised the prosecution of a number of notable cases, among them the trial of Anthony “Tony Pro” Provenzano, a notorious capo in the Genovese crime family, who used his position as an International Brotherhood of Teamsters vice president to siphon off union funds for his personal use.

Satz’s most famous case, however, was the prosecution of Tino DiAngeles, in what became known as the great “Salad Oil Swindle.” The swindle began when DiAngeles, owner of the Allied Crude Vegetable Oil Company, discovered that banks would make loans secured by its salad oil inventory. On paper, Allied’s assets consisted of enormous quantities of soybean, cottonseed, and other oils, which it kept in tanks in Bayonne, N.J. In reality, most of those tanks were filled with water and other unknown substances, with only a thin layer of oil floating at the top of the tanks. When the scam was uncovered, a number of brokerage firms went bankrupt, and American Express alone lost millions of dollars, suffering a fifty percent drop in its stock price. Satz’s office performed much of the work in developing the case against DiAngeles and encouraging various federal agencies like the Criminal Division of Justice and the Department of Agriculture to coordinate their efforts.

Despite the radical cultural and governmental changes of the 1960’s, Satz noted that many aspects of life in the federal courts remained virtually unchanged. The composition of the Office workforce remained largely a province of white men, due to the limited availability of openings in the Office and the difficulty in finding women and minority candidates. On a more positive note, Satz remembers that courtroom manners and the overall decorum of the Bar reflected the standards of earlier times, as lawyers were more properly dressed and displayed a greater respect for the Court. Satz’s relationship with the media was also quite friendly and old-fashioned, as reporters tended to accept the information given to them and did not press the Office to provide more sensitive or sensationalist information.

Throughout his eight years of service as U.S. Attorney, Satz struggled to gain respect and recognition for the New Jersey Attorney’s office in Washington, where bureaucrats in the various agencies were often unwilling to offer the help he needed. Though the Washington agencies did not open their arms to him, Satz was able to acquire both a grudging respect for the New Jersey Office and more flexibility in the oversight and management of his cases. Nevertheless, of his many accomplishments in office, Satz is most proud of changing the overall attitude of the various law enforcement agencies towards working with each other and with the U.S. Attorney’s office, an accomplishment that has become even more essential in the present day struggle

against terrorism.

Satz left public service in 1969 for a celebrated career in the private sector. He joined the law firm of Saiber Schlesinger Satz & Goldstein, LLC, where he is currently Of Counsel. He has since served as President of the International Association of Gaming Attorneys and as President of the Newark Chapter of the Federal Bar Association. Still, of all of Satz's exceptional achievements, his accomplishments as the United States Attorney for the District of New Jersey constitute the most pivotal of all, for which we, the people of New Jersey, are very grateful.

Lady Justice: A Controversial Artistic Depiction

By: The Honorable Claire C. Cecchi, U.S.M.J.

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.



Out of the 69 entries received, including those 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 up 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 simple figure of a woman, nude to the waist, with strong upraised arms and very little ornamentation. Kraus drew inspiration from his brother who was a Judge in Kraus's 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's 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's 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 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's 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's 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's 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's 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 "cheapened 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 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 ever since.

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? You be the judge.



Mark Lender, Donald Robinson, Douglas Arpert and William Walsh at our Annual Gala on May 10, 2006.

Thomas Lowry, The First Marshal of the District of New Jersey - Patriot, Businessman and Politician

By: **The Honorable Peter G. Sheridan, U.S.D.J.**

Thomas Lowry, the first Marshal of New Jersey, is a colorful character. Prior to assuming the position of Marshal, he was a real estate tycoon, merchandiser, patriot, soldier and politician. He hobnobbed with heroes like George Washington and was a devoted family man. This article is the first of two installments. Part one focuses on his background and heroic service during the Revolutionary War.

Early Years

Except for the fact that Thomas Lowry was born in Ireland on September 3, 1737, and came to America in 1747 with his mother, a widow, his early years are a mystery. As one historian put it, “reliable data relative to his early life is extremely scant.” Historians cannot even agree on how to spell his name! Depending on the source, it is spelled Lowry, Lowery, Lowrey or Lawrie. Moreover, the available information about his youth is highly unreliable.

What is known is that Lowry began to work for a tavern owner, Sam Fleming (after whom the Township of Flemington was named). There is no evidence that Lowry had any formal education of any nature. Evidently, Lowry stole the heart of Fleming’s daughter, Esther, and the “kids” married. Thomas was between 13 and 17 years old, and Esther was 2 years younger. They raised eleven children and were married for approximately 50 years!

Merchant and Real Estate Tycoon

At the time of the marriage, Sam Fleming conveyed a tiny parcel on Main Street in Flemington (650 square feet) to Lowry. Lowry constructed a storehouse and opened a general store on the site. Lowry’s business blossomed. Even in the mid-1700’s, Lowry obviously understood the importance of the real estate mantra “location, location, location.” His store was the only one for miles around, and it was a profitable venture. Thomas reinvested his profits, and by 1762, Thomas (age 25) was a sizable landowner in Flemington and the surrounding area. He owned hundreds of acres. A plat of Flemington depicts Lowry’s holdings.

Thomas Lowry was, more than anything, a great merchant. As noted above, his first shop in Flemington was a success. He built a grain and produce store in Flemington, and he served as Commissary for the militia. He continued his business in Flemington until about 1790 – around the same time he was appointed United States Marshal. Although Lowry bought hundreds of acres west of Flemington along the Delaware River in what is presently known as Frenchtown in 1775, he did not relocate until 1790. Some historians quarrel over whether Lowry built the first grist mill along the Delaware in Frenchtown or simply purchased it. His wife, Esther, disliked Frenchtown, so a few years later they moved a few miles north and established Lowrytown – presently known as Milford. His Lowrytown store carried sundry items; but being a true Irishman, he advertised “spirits” among other things. One advertisement read:

Thomas Lowrey has for sale at his store in Alexandria Township, Madeira and Lisbon wines, brandy, Jamaica and Antigua spirits by the hogshead, barrel and retail, muscovado





and loaf sugars, tea, coffee, pepper, alspice, molasses - and a general assortment of dry goods. The above goods are principally imported in the last vessels, and have not been in Philadelphia since the contagion took place. He will pay cash for wheat, rye, etc.

War Hero

Although Lowry enjoyed tremendous business success, his service to our then fledgling country is remarkable. Bottlenecked between northern and southern colonies, New Jersey was a critical state for the Continental Army to hold during the Revolutionary War. If the British controlled New Jersey, communication between “New England and the South would have been almost totally disrupted.” In New Jersey, a tattered and torn Continental Army with little funds challenged the well-financed British Army, and General Washington understood the stakes for holding firm in New Jersey. Lowry was a patriot, but not in the traditional sense of a combat hero. Lowry put his merchandising skills to use and focused on supplying the militia with the necessary provisions.

To understand Lowry’s important role, some background is required. The Continental Congress had established a commissary system of supply called “The Office of the Commissary General and Stores and Provisions for the Continental Army” in 1775. There were regional storehouses where a commissary officer purchased and provided supplies to the Continental Army. The system was fraught with problems. There was fraud and mismanagement. The members of the Continental Congress, jealous of their regional interests, gave conflicting authority to various individuals with regard to the oversight and purchase of supplies. Nowhere were these problems more evident than in New Jersey. The first General of the Commissary, Joseph Trumbull, was from Connecticut. He had successfully supplied troops in and around Boston, and General Washington was impressed with his work. However, as the war moved to the middle states, Trumbull’s scope of authority from Congress became blurry. New Yorkers were enraged that Trumbull relied on New Englanders rather than engaging local merchants to supply the troops to the middle states. Without Washington or Trumbull knowing, the Continental Congress permitted Abraham Livingston of New York to supply the middle states. As a result, Trumbull’s authority was floundering in this region and creating greater confusion.

Lowry’s prowess as a supplier of goods for the militia was well known. The first concrete evidence of his reputation came in early 1776 when the Continental Congress needed to supply the Army in Albany. On April 20, 1776, John Hancock, on behalf of the delegates to the Continental Congress, requested that Lowry supply the militia there. Hancock corresponded directly with Lowry:

Sir, Philada. April 20, 1776.

I have it in charge from Congress to direct your immediate attention to the inclosed Resolve of Congress for the purchase of two thousand barrels of pork, which when purchased, or Part thereof, you will forward in the most expeditious manner to General Schuyler at Albany; as it is of great importance the army in Canada should be well supplied, you will exert yourself to affect this purchase speedily. (1) Whenever you send or draw for the money, your bill on me shall meet due honour for twenty thousand dollars. My respects to Mrs. Lowry. I hope I shall soon have time to write.

Lowry’s ability and courage to act on behalf of the Continental Army was thereafter recognized by Brigadier General Hugh Mercer in a report to General Washington on July 9, 1776. At that time, Trumbull had appointed Lowry, Dunham and Ogden to act as commissaries in New Jersey. In Mercer’s report, he commented about the services of the three “contractors for the Army here.” Unlike the militias in other states, Mercer thought provisions for the Continental Army in New Jersey were adequate. He reported that his troops had “good stock of Pickled Port” and “any quantity of live stock & flour necessary for our supplies.” Mercer then requested that Lowry be placed in charge of commissary operations. He wrote to Washington:

The services performed by Mr. Dunham have fallen more immediately under my Notice – by what I have seen that the Gentleman is very unfit for any extensive business in his Way – in so much as if we are to depend on his Abilities & Assiduity, the army must Starve – It is in my opinion absolutely necessary that One Person be employed here as Commissary General for the Camp – who is to employ and be answerable for the necessary subordinate persons to issue Provisions – Mr. Lowrie by all accounts would suit very well & would undertake it — It is of equal consideration with me, who the Person is – so One has the Sole direction I beg your excellency will please to consider how essential it is that no cause of Complaint be given the Troops in our present circumstances – and that you will interpose your Authority with Mr. Trumbull to have this put on proper footing and as Speedily as possible. I have the honour, to be Sir your excellencys Most obedt Servt.

Contemporaneously with this letter, in an effort to regain his control over commissary operations, Trumbull appointed Carpenter Wharton to supply troops in the middle states including the “flying camp” that was established in New Jersey. A “flying camp” was a mobile force ready to meet and oppose the British wherever they might land. This appointment proved to be disastrous. Washington immediately recognized that the appointment was a mistake and demanded “an officer of much sagacity and diligence” be responsible rather than Wharton. By December, 1776, a lack of supplies had become a major issue in New Jersey. According to Washington, the issue delayed his re-crossing of the Delaware River on December 31, 1776, for two days and impeded the troops from capitalizing on their victory at Trenton by slowing their pursuit of British. Peeved by this predicament, Washington appointed Colonel Thomas Lowry as Deputy Commissary General. Accordingly, Lowry was commissioned to supply the troops immediately.

This move angered Robert Ogden, one of the other commissaries. Ogden, a prominent lawyer and legislator, was offended by Washington’s choice. Although Washington attempted to smooth it over with Ogden, he was resolute in his appointment of Lowry. On January 24, 1777, Washington wrote to Ogden:

Sir,

You would do me injustice if you supposed that the Appointment of Colo. Lourey to the post of D.C. Genl proceeded from any other cause than necessity - I was retarded from crossing the Delaware two days & when over, was forced, from the want of a sufficient quantity of Provisions, to permit the Troops to victual themselves where they could. No time therefore was to be lost in removing so great an Inconvenience, in which I have succeeded since Colo. Loury undertook the Business - It ever was disagreeable to me to remove any Gentm from office, and I beg that I may be excused when the Public Good requires it. I am Sir Yr mo. Ob. Sert.

P.S. I do not interfere with any Person appointed by Colo. Loury in this business - He is answerable to me, consequently may employ whom he pleases.

Colonel Lowry obtained the much needed supplies. Washington noted Lowry’s accomplishment in a letter to Jeremiah Wadsworth dated February 3, 1777:

Sir,

The present unsettled State of the Commissary’s department in this quarter, makes me fearful, that unless some measures are fallen upon under to reconcile the jarring Interests of these who act, or pretend to act, under the appointments of Colo. Trumbull, that the Army will in a little while want Supplies of every kind.

When I ordered the Army to pass into Jersey, the last time, they were delayed two

days for want of provisions, and when they got a small Supply, and arrived at Trenton, I could neither find Commissary nor issuing officer the soldiers were obliged to kill the Cattle which they accidentally found there and to serve some salt provisions which had been left in the Town by the Enemy. Mr. Ogden and Mr. Dunham had prior to this, acted as Commissaries.

In this distressed situation I was advised by several Gentlemen to apply to Mr. Thomas Lowrey as the most likely person, to throw an immediate supply of provisions. I did apply, and the provisions were immediately sent it. Soon after my Arrival at this place, Mr. Carpenter Wharton came here, and informed me, that he was so busily employed in laying up the great Magazines in Pennsylvania and to the Southward, that he could not possibly attend to the Supply of the Army in Jersey, but that I might depend upon Mr. Lowrey for every thing. Mr. Lowrey undertook this, and Mr. Matthew Irwin was fixed as issuing Commissary. Matters being thus arranged, I expected all things would go on smoothly in future and that I should hear no more complaints.

Mr. Ogden and Mr. Dunham came to me and talked much of their being ill used, in being displaced, and the preference given to Lowrey, but I told them very shortly, that I was determined to have those in Office who were most likely to serve me best. But I foresaw an inconvenience, which I am apt to think has happened, and that is, that Ogden and Dunham would throw every obstacle in Lowrey's way.

Prior to Lowry's appointment the Commissary was in poor shape. Although no one can say with certainty, Lowry's efforts may have altered the course of the war in New Jersey.

Skirmish in Hunterdon

In December, 1776 in Hunterdon County, Lowry was involved in a lethal skirmish with the British forces. During the war, many farmers, in order to prevent destruction of their property by the British, were granted a Statement of Protection in exchange for a pledge of loyalty to the Crown. Despite obtaining the Statement of Protection, many of the farmers were secretly aligned with the Continental Army. One such farmer was John Schenk. He entered the British camp at Pennytown (now Pennington) under the guise of obtaining a Statement of Protection, but while in the camp he secretly gathered intelligence about British operations and reported it to the Continental Army. On December 13, 1776, John Schenk overheard the British discussing a plan to ferret out Lowry, who was operating a Commissary for the militia in Flemington. The British plan was to have about eight of their elite cavalry known as the Queen's Light Dragoons travel from their base to the Flemington area to locate the commissary, inventory its contents and report back. If the commissary was found to be of significance, "500 infantrymen were to advance to confiscate those valuable supplies, by force if need be."

Based on Schenk's information, Lowry was forewarned and escaped harm. In addition, a plan was developed to counter the British. The Light Dragoons galloped to Flemington under the direction of Cornet Francis Geary without incident and located the cache. On their return, Schenk and several other patriots ambushed the Light Dragoons, killing Geary. Why the British did not move to take the Commissary thereafter is unclear. One version is that the British returned to the scene of the ambush and a local farmer intentionally misinformed them that Washington had placed a large force in the vicinity around Flemington.



A more colorful retelling credits Lowry with outwitting the British. This version has Lowry appear in battle dress on the top of a hillside



in full view of Geary, and Lowry feigned as if he was leading a substantial force who were ascending the hill in order to attack Geary. Geary, thinking the militia was approaching, quickly retreated toward his encampment. As planned, Geary's Light Dragoons rode directly into Schenk's ambush. In fact, Lowry had no troops.

For whatever reason, the British decision not to attack the Commissary was crucial to supplying the Continental Army while Washington moved north to Morristown to establish his winter quarters. No matter which version of the facts is true, the episode underscores the bravery of Lowry because commissaries were key military targets of the British.

Member of Provincial Congress

In the summer of 1775, Lowry served as a delegate from Hunterdon County to the Provincial Congress of New Jersey. In the early 1770s, the British controlled the colony of New Jersey through the King's appointment of a Governor and Assembly of Delegates. The Assembly was comprised mainly of loyalists to the Crown. In response, the colonists established the Continental Congress, a body comprised of delegates from the colonies and established by them without the permission of the King. In about 1770, the Congress requested each colony to establish a Committee on Correspondence in order to exchange intelligence and recommendations on how to manage the colonies' relationship with the British. At some point in 1774, the Congress advised each colony through the Committees on Correspondence to establish a provincial congress in order to prepare for self-rule. Lowry was a member of this body in New Jersey in 1775. The Provincial Congress was not recognized by the British government and often met in secret. The chief accomplishments of the Provincial Congress of New Jersey were the adoption of the first constitution of New Jersey, and the deposing and incarceration of Governor Franklin, who had been appointed by the Crown and was Benjamin Franklin's son. Lowry served prior to those events but, during Lowry's tenure, the Provincial Congress established a militia. The plan authorized the appointment of officers and required that all men between 16 and 50 serve in the militia or pay 4 shillings per month in lieu of service. Each private soldier was to be provided with "good arms, power and ball." The most aggressive part of the plan called for the establishment of a force of 4,000 minutemen "in New Jersey who shall hold themselves in constant readiness on the shortest notice to march to any place where their assistance may be required." Obviously, this was the first and most critical step toward waging war against the British, and Governor Franklin would not have been removed from office without the establishment of the militia to carry out the plan.

Prisoner of War

At some point in early 1778, Lowry was captured by the British. The circumstances surrounding his capture are unclear. But he was part of a prisoner swap negotiated directly between General William Howe, commander of the British troops, and Washington in April, 1778. Howe proposed the release of two British Deputy Commissaries, Higgins and Clarke, in exchange for release of one of your principal Commissaries, Mr. Lowry.

Howe wrote to Washington:

Sir,

At the earnest request of Mrs. Higgins who desires to have the Honor of waiting upon you, I am induced to trouble you with this letter by her to offer Mr. Lawrie (one of your principal Commissaries) in exchange for her husband and Mr. Clarke, both Deputy Commissaries & under the Convention of Saratoga. If this proposal meets with your approbations; I shall immediately give up Mr. Lawrie's parole; and trusting that the fair lady will be a more prevailing advocate in obtaining your compliance for the return of her husband than I can possibly presume to be, I decline urging any thing further in favour of her request. With due regard I am sir, your most obedt servant.

Several days later, Washington, who was encamped at Valley Forge at the time, downplayed Lowry's importance to the militia in his response to Howe's offer, and countered that the exchange be one for one - Higgins for Lowry. Washington bartered:

Sir,

I have been favoured with your Letter of the 16th Inst.

Mr. Lowry was never a principal Commissary of ours, but only acted occasionally, as a deputy, for purchasing provisions where he lived. I do not know, whether he was employed, at the time of his capture, even in this line. From this state of facts, you will readily agree with me that I can not with propriety accede to your offer. However, in order to put the fair Lady, in whose case you so obligingly interest yourself, in the possession of her husband, I would propose that an exchange should take place between Mr. Higgins and Mr. Lowry. I am ready as far as depends on me, to comply with the Lady's wishes, and it remains with you to lend your aid for their completion.

I request that your flags in the future, may cross the Schuylkil near Philadelphia, and proceed to our out post, by the Lancaster railroad. by taking the route east of Schuylkil, they may meet with accidents from parties of Militia, for which I cannot be responsible. I am sir with due regard Yr. Most Obedt servt.

On April 20, 1778, the exchange as Washington had proposed happened.

In summary, Lowry undertook major responsibilities in our country's fight for freedom and independence and performed those duties with distinction of valor. In the next installment, Lowry's tenure as Marshal of the District Court will be addressed together with several other key roles he played in New Jersey.

Judge Sheridan wishes to thank Harriett Tyrrell, his Administrative Assistant, for researching many documents upon which this article is based, as well as Dorothy Cordo, Assistant Librarian, Branch Library, District of New Jersey in Newark and Robert Heym of the New Jersey State Library.



Chief Judge Garrett Brown, Jr., Dean Mark Lender and former Chief Judge John Bissell at our Annual Gala.



Judge Madeline Arleo presents Judge William Bassler with an award at our Annual Gala.

Editor:

Frances C. Bajada, Esq.

Visit our website at
www.history.njd.uscourts.gov

Chairman of the Board:

Donald A. Robinson, Esq.

President:

Douglas E. Arpert, Esq.

Vice Presidents:

Frances C. Bajada, Esq.

Robert Bartkus, Esq.

The Honorable Esther Salas, U.S.M.J.

Marion Purcell, Esq.

Treasurer:

Sean R. Kelly, Esq.

Secretary:

Lynne Kosobucki, Esq.

Executive Director:

Susan A. Travis

Counsel:

McCarter & English, LLP



Judge William Bassler and family.