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The Honorable William Nealon, U.S.D.J.

By: Gale Raffield

The year was 1973. Judge John Kitchen had died after only three years presiding in the Camden vicinage. This left there just Judges Thomas Madden and Mitchell Cohen. Yet the volume of cases, already high, was increasing. Help was needed. The Nixon administration had failed to fill the vacancy. So our District Court itself used the remedy of self-help. Judge Clarkson Fisher (later the Trenton Courthouse was named in his honor) helped out by sitting in Camden part-time, along with Judges Lawrence Whipple and James Coolahan. But still the Courts' dockets were overloaded. What's the answer? Visiting Judges. Help arrived from Judges in the Eastern, Western and Middle Districts of Pennsylvania who came here to try cases. Our District even once had a Third Circuit Judge trying cases in Newark. He was Judge Gerald McLaughlin. In 1958, he volunteered to try criminal cases during a slow time in Philadelphia. But his travel and hotel expenses were not a taxpayer expense; he was a life-long Newark resident and his Circuit Court chambers were already in the Newark Courthouse.

Another visiting Judge was William Nealon from the United States District Court for the Middle District of Pennsylvania. Judge Nealon today is the Senior Judge in his hometown of Scranton where he has been District Judge for 45 years sitting in a Courthouse now named in his honor. He recently related his memories of his time in Camden. He assisted our District three separate times when the Camden calendars were heavy. Although he has no recollection of specific trials he presided over, he vividly and happily recalled the camaraderie of his New Jersey colleagues. Judge Fisher, for example, when in Camden favored the Pine Grille at 5th and Pine (especially for its Italian peppers) for daily post-trial day relaxation. Judge Nealon fondly recalls joining him many times before returning to his hotel in Philadelphia. Then, each morning he would use public transportation back to the Camden Courthouse to go to work. When the Marshal's office learned of his travels, though, they insisted on chauffeuring him. An interesting twist is that when Judge Nealon returned to his duties in the Middle District of Pennsylvania, a high-profile case was transferred from our Court to him for trial there. The case was *U.S. v. McCrane* assigned to him because of two mistrials due to excessive pre-trial publicity in New Jersey. McCrane had been the New Jersey State Treasurer and later was Finance Chairman for Governor Cahill's campaign. He was convicted of a scheme where he provided invoices for fictitious advertising services which the campaign con-



tributors then deducted as business expenses. The conviction was affirmed on appeal.

Judge Nealon reminisced about his close relationships with Judges Gerry and Cohen, being entertained by the singing voice of Judge Coolahan, having fun in Hudson County with Judge Anthony Augelli and Clerk of the Court Angelo Locasio. What he remembers most, though, is the “collegiality of Jersey Judges” and “how much they enjoyed each other.”

Steve Greenberg, Esq., a veteran and prominent Federal practitioner, remembers his experience with a visiting Judge. When Steve was an Assistant U.S. Attorney, he was the prosecutor in *U.S. v. Todaro*. The visiting Judge was Robert Belloni from Oregon. He was not only unfamiliar with local Rules, but also unaware of local traffic congestion. One day during the trial, he held defense counsel in contempt for *his* 15-minute late arrival in Court. Steve, though, always collegial, convinced our visiting jurist to reverse himself. When asked for a vivid memory of that trial, Steve stated, “I have two. The jury convicted and Judge Belloni, who tended to doze during the trial, one day just fell off his chair!”

From time to time when clusters of court congestion arose, our District was not shy in asking for help. Other Judges who sat by designation included Judge Gustave Diamond from Pittsburgh, Judges John Fullam and Donald VanArtsdalen from Philadelphia. Those Judges established lifelong relationship with our Judges and enjoyed happy reunions at each Third Circuit Judicial Conference.

Today, the need for visiting judges has been eliminated thanks to our Magistrate Judges. Their case loads and efficient, tedious duties of case management, resolution of discovery and related disputes, has enabled our District to maintain its high ranking in the Country for the timely disposition of cases. We continue to be one of the top Districts in the Nation.

The 1967 Newark Riots: A Crucible in the Careers of Two Federal Judges

By: John Azzarello, Esq.

The 40th anniversary of the Newark riots this July, commemorated by newspapers and television with stories, photographs and footage detailing a painful chapter in New Jersey history, presents the occasion to recall the roles played by John J. Gibbons and Lawrence A. Whipple, who would go on to become two of New Jersey’s most prominent federal jurists, in protecting the Constitutional right of arrested persons to prompt bail determinations, even amidst the chaos of those events.

The extreme poverty and discrimination endured by many of America’s black communities culminated in violent displays of frustration in the summer of 1967. The rioting was sparked on the night of July 12, when a black cab driver, John Smith, was pulled over, arrested by two white officers, and subsequently transported to the precinct and severely beaten by the arresting officers. News of Smith’s arrest quickly spread to the community. The crowd that gathered outside the precinct demanded that Smith be taken to a hospital, but rumors soon reached the crowd that he had instead died in police custody. Chaos escalated as angry mobs from the predominantly black neighborhoods hastily progressed towards downtown Newark, inflicting mass destruction and violence throughout the city. The chaos was so severe that the National Guard was called in, though this attempt at control only intensified the violence. The rioting did not subside until five days had passed, leaving 23 people killed, 725 injured and approximately 1,500 arrested.

Because of the chaos in Newark there were hundreds of people in custody at various locations including the National Guard Armory in West Orange. As part of restoring order to the city, the State legal system faced the tough question of what to do with the masses of people who had been detained at various locations. The large number of people in irregular confinement meant the police were unable to spare the manpower to transfer everyone to the courthouse for bail hearings.

Two of New Jersey's prominent judicial figures, Judges Gibbons and Whipple, played central roles in formulating a plan to resolve this dilemma. The Attorney General, the Newark Police and the New Jersey State Police met to address the issue. At the meeting, Judge Whipple, then the acting Assignment Judge in Essex County, displaying the level-headed pragmatism familiar to all who later came to know him as the New Jersey federal district judge that he became soon thereafter in 1967, proposed an idea to John J. Gibbons, then President of the New Jersey Bar Association, whose ardent concern for justice and fairness subsequently defined his 20-year tenure as Chief Judge for the Third Circuit Court of Appeals from 1970 to 1990. Judge Whipple and Judge Gibbons arranged for judges to be escorted to the places of confinement so that those detained could undergo legal proceedings there. With enough help, the National Guard Armory in West Orange was effectively transformed into the court system for this purpose. In the absence of present-day public defenders (the New Jersey Office of the Public Defender had only just been created on July 1, 1967), Judge Gibbons was able to organize a large group of volunteer lawyers to represent the arrested persons. This work required a massive effort on the part of these lawyers, who acted around the clock to have bails set. Those volunteers were young lawyers who went on to become some of the most respected lawyers in New Jersey and many are current members of the Association of the Federal Bar of New Jersey. The work proved successful, and most of those detained were released free of charges.

The Newark riots are remembered for their devastating effects on individuals, on the city of Newark and on a country struggling with the issues of civil rights. Yet where the history of the riots intersects with the history of the New Jersey federal court, in the persons of Judges Gibbons and Whipple, we can also recall efforts to restore order to the courts amid the unrest, by helping to secure the Constitutional rights of more than one thousand people who were arrested and confined.

The author wishes to thank John Farmer, Jr., Esq., for his contributions to this article.

SAVE THE DATE!

On **Wednesday, December 5, 2007, 4:00 pm**, the Historical Society will host a swearing-in ceremony for newly admitted attorneys to the Bar of the State of New Jersey and the Bar of the U.S. District Court for the District of New Jersey in the Ceremonial Courtroom, U.S. District Court, Lautenberg Courthouse and Post Office Building, Newark, N.J.

Date for Camden, N.J. ceremony to be announced.

On Constitution Day, **September 17, 2007**, the U.S. District Court for the District of New Jersey, in cooperation with the U.S. Postal Service and the Historical Society, will be conducting a program to celebrate the unveiling of a commemorative jury duty stamp. The program will commence at 1:00 p.m. in the Lipton Gallery of the Mitchell H. Cohen U.S. Courthouse, 1 John F. Gerry Plaza, Camden, N.J.

The program will address the historical origin of jury duty and the importance of jury service today. Scheduled speakers include U. S. Congressman Robert E. Andrews, Postmaster Joseph Kinney, U.S. District Judge Jerome Simandle, Dean John Beckerman of Rutgers Law School-Camden, Keith J. Miller, Esq., of the Historical Society, and Jeffrey J. Greenbaum, Esq., President of the Association of the Federal Bar of New Jersey. Light refreshments will be served at the program, which is open to the public. Members of the Bar are encouraged to attend.

SAVE THE DATE!

This year's Supreme Court swearing-in ceremony will be held on **Monday, November 5, 2007**. The day will include breakfast in a conference room in the Supreme Court courthouse, followed by the admission ceremony in the courtroom. If they wish, attendees can remain in the courtroom for the entire argument session which will follow the admission ceremony. Seating for one guest per applicant is guaranteed.

Applications, along with the \$100 application fee, must be submitted by Friday, September 28, 2007 to Lynne Kosobucki c/o Judge Greenaway's Chambers, U.S.P.O. and Federal Courthouse, Federal Square and Walnut Street, Newark, N.J. 07101. Applications are available on the Supreme Court's website, <http://www.supremecourtus.gov>. If you have any questions, please call Lynne at 973-622-4828.

The Historical Society and Trenton Courthouse community, with the cooperation of GSA, are presenting a historical art exhibit featuring the Charles Ward Murals. The murals are recognized as some of the finest created as part of the U.S. Public Works of Art Project. The mural installed over the main door of the Clarkson S. Fisher Courthouse in Trenton is the first Post Office installation in the United States of a WPA mural. Charles Ward completed two others for the same building, entitled "Rural Delivery" and "The Second Battle of Trenton." In addition to the Ward murals, there will be an exhibition of many of Ward's other works, graciously on loan from the Ward family.

Come join the Trenton community and celebrate the works of its native son, Charles W. Ward, at a reception on **Thursday, October 11, 2007, 6:00-8:00 pm** in the main hall of the Clarkson S. Fisher Courthouse, Trenton, N.J.

The Clarkson S. Fisher Scholarship

By: Douglas E. Arpert, Esq.

In 1984, Chief Judge Clarkson S. Fisher recognized that the history of this (the second oldest District Court in the nation) would be a source of inspiration and pride not only for the Judges who serve on it and the attorneys who appear before it, but also for the clerks, administrators, clerical staff and others who support its work; in short, all those who comprise what we have come to refer to as our "beloved federal family." To give life to this understanding, Judge Fisher encouraged the creation of this Historical Society. His encouragement during its early years helped the Society to flourish. He was a charter member of the Board of Directors and remained active in its work throughout his tenure on the Court.

In recognition of the important role which Judge Fisher played in the early life of the Historical Society, in January 2006 the Board of Directors authorized the creation of The Clarkson S. Fisher Scholarship Fund. The proceeds of the Fund will be used to make annual Scholarship Awards based on essay contest and other criteria including financial need. Eligible applicants include members of the District Court Clerk's Office staff, Chambers' staffs, and other Court related personnel throughout the District; those people whose work on behalf of the Court Judge Fisher held in such high regard and for whom he had such great affection.

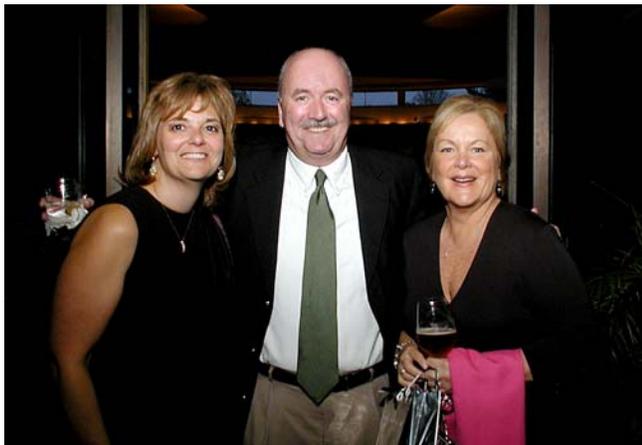
Leadership gifts to the Fund have been provided by Judge Fisher's family, former law clerks, and members of the Society. Additional contributions to the Fund have been received in connection with the Society's annual membership solicitation. Your support of this Fund, and all of the Historical Society's activities and programs, is greatly appreciated.

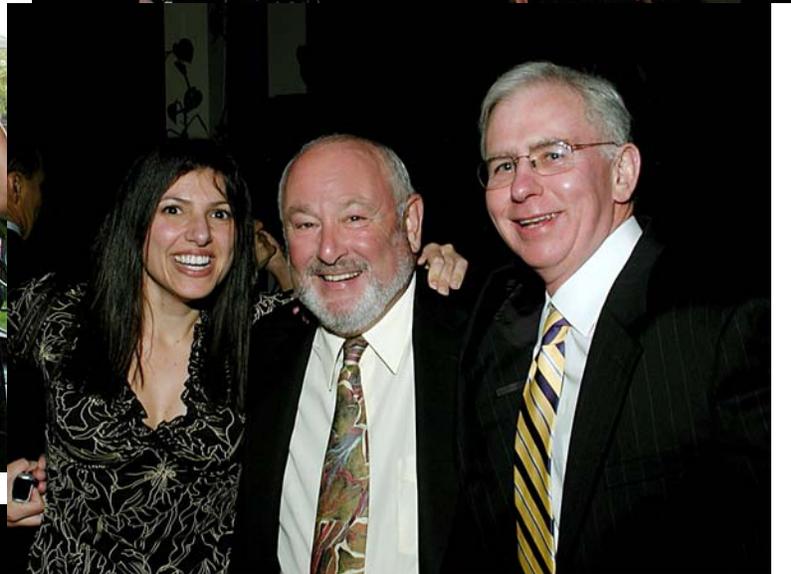
*The Board of Directors gratefully acknowledges the following gifts to
The Clarkson S. Fisher Scholarship Fund:*

- * In memory of Chief Judge Clarkson S. Fisher, on the 10th anniversary of his death, by his wife, Mae H. Fisher, and Family.*
- * In memory of George J. Koelzer by Mae H. Fisher and Family.*



Members of the
Historical Society celebrating
at our Annual Chairman's
Ball held at Jasna Polana,
Princeton, New Jersey.









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.

In the previous installment, the military and business experience of Thomas Lowry were discussed. In this article, Lowry's life after 1788 will be examined including his service as a Marshal, State Legislator and member of the Society of Useful Manufacturers.

Marshal

Thomas Lowry served three terms as U.S. Marshal. He was appointed in 1789 and 1794 by President George Washington, and in 1798 by President John Adams.

In September 1789, Lowry was nominated to be marshal along with two prominent cabinet members. Washington's communiqué to the Senate reflects, perhaps, Washington's view of the importance of establishing the Judicial Branch of government as quickly as possible after ratification of the Constitution. By the same letter in which Washington nominated personnel to the District Courts of New York and New Jersey, including Lowry, he matter-of-factly added that the nomination of several cabinet members including "Thomas Jefferson, for Secretary of State!" Washington's letter simply reads:

United States, September 25, 1789.

Gentlemen of the Senate:

I nominate - James Duane, Judge,

William S. Smith, Marshal, : For the District of

Richard Harrison, Attorney : New York

David Brearly, Judge :

Thomas Lowry, Marshal, : For the District of

Richard Stockton, Attorney : New Jersey

And I likewise nominate Thomas Jefferson, for Secretary of State;

Edmund Randolph, for Attorney General;

Samuel Osgood, for Postmaster General.

Geo. Washington

By placing the appointments for the Districts of New York and New Jersey above those of Jefferson and Randolph (both of whom attended the Constitutional Convention), Washington underscored his belief that the Courts were an essential part of government.

On December 29, 1779, Lowry attended the first session of the U.S. District Court for the District of New Jersey. From the minutes, there appears to have been little fanfare. The minutes of the Court reflect that "the commissions of David Brearly, Judge, Richard Stockton, Attorney, Thomas Lowry, Marshal and Jonathan Dayton, Clerk were read." The court adjourned without concluding any further business.

Lowry's duties as Marshal can be best described as routine. The court convened quarterly. At each session, Lowry was called upon to present the "Writs and Precepts" to the Court. It appears that Lowry and his assistants performed duties that are very similar to functions of marshals today. Lowry arrested (or in the language of the court at the time, "returned the body of") many individuals who were compelled to appear before the court. The marshals regularly levied on land and chattel in all regions of the State including Princeton, Piscataway and Salem County. Lowry, to his credit and in his low-key manner, administered the responsibili-



ties of the Office of Marshal for twelve years—a job which previously had no history, protocol or practice. He established a tradition of excellence and service (a good description of Lowry’s term as marshal is contained in *This Honorable Court* by Mark Lender). Although the workings of his office may have been in many respects commonplace tasks of a marshal, Lowry’s other responsibilities were fascinating.

One of the most important assignments delegated to the marshals by Congress was conducting the first national census within each district. The Constitution provides that the number of representatives from each state is based upon a decennial “enumeration of inhabitants.” In order to comply, Congress passed “an act providing for the enumeration of the Inhabitants of the United States” together with an appropriation of funds. Within the statute, Congress authorized Marshals to hire deputies to assist in the headcount; and required that certain information be gathered about their constituents. Congress mandated that a schedule of the names of heads of families, and the number of free white males, free white females and slaves in each household be set forth and forwarded to the President. It appears that the marshals were forwarded a copy “of the census law and nothing more,” by Tobias Lear, President Washington’s personal secretary. The marshals, on horseback, traveled from town to town recording the populace. According to the papers of Alexander Hamilton, then Treasurer of the United States, Congress appropriated to the marshals the amount of \$21,850 to conduct the census of which \$200.00 was initially allocated to New Jersey. In addition, “assistants to the marshals” who were to be compensated upon the number of persons counted was also approved by Congress. About nine months after the census commenced (May 18, 1791), Lowry, in his capacity as marshal, was paid an additional \$1,300.00 for the assistants’ work. In all, the official number of inhabitants in New Jersey was 184,139 of a total of 3,929,214 counted.

Unfortunately, little else is known about the 1790 census in New Jersey and five other states. The original documents and schedules were destroyed when the British attacked Washington, D.C. during the War of 1812. By statute, Congress directed each Clerk of the District Court to “carefully preserve” a copy of the census schedules; but records of the District Court do not disclose any information about the census. The procedures established by Lowry and the other marshals were utilized until 1840 when the census duties were transferred from the marshal’s service to the census bureau. What can be concluded is that Lowry, with little oversight, organized and implemented the census-taking in New Jersey in his usual competent and professional manner.

The Society for Establishing Useful Manufacturers

In the late 1780s, Alexander Hamilton recognized that the economic growth of the United States was tied to diversification of the American economy. He envisioned an economic transformation from solely an agrarian economy into one that included a substantial manufacturing sector. As important, many recognized that the United States’ total reliance on Europe for manufactured goods could subject the Country to economic blackmail due to that dependence which, in turn, would undermine the Country’s security. At that time, Hamilton authored and delivered to Congress a “Report on Manufacturers.” It was widely acclaimed. His blueprint for establishing a manufacturing sector in the economy was to create a quasi-public corporation and to develop a city where a manufacturing hub could thrive. Some of the ingredients for success for the manufacturing center included access to a river for power and transportation and availability of sufficient land to construct housing, shops, schools, churches, etc. to service the factory workers. Secretary Hamilton believed New Jersey was the ideal place due to its central location, river access and proximity to New York and Philadelphia.

His innovative ideas received national recognition. Many wealthy business persons invested in the enterprise, including Thomas Lowry. Lowry was an early investor who knew Hamilton. On two occasions prior to the selection of the exact site, Lowry interceded with Hamilton to locate the manufacturing center in Hunterdon and Sussex Counties where Lowry headquartered his general store and grist mill. On October 14, 1791, Lowry wrote to Hamilton regarding the costs of raw materials and food stuff in an area he described as

“twenty to forty miles above Trenton in the Neighborhood of the Delaware and Raritan Rivers.” He claimed food was inexpensive, “fuel, as wood, is . . . abundant,” coal of the “blazing kind almost inexhaustible,” and could be mined in nearby “mountains which cross the Delaware.” Lowry continued that the “labour of an able bodied man may be obtained, from fifteen and eighteen pounds per annum if found in provisions and lodgings.” Lastly he noted “transportation of produce down the Delaware “to where the tide meets the current is by . . . Durham boats, which carry with great safety.” In a subsequent letter, Lowry again championed his locale (this time describing it as the “mouth of the Musconectong”) and emphasized that the lower cost of fuel would offset higher transportation costs compared to other potential sites.

Several weeks after these letters, the New Jersey Legislature enacted a law incorporating the Society for Establishing Useful Manufacturers. The Society had directors from both New York and New Jersey. The law empowered the Society to select a six square mile area, to build canals and roads, to incorporate a city, and to authorize the Society to raise money in support of manufacturing operations by instituting a lottery if necessary. In addition, the State of New Jersey became a shareholder by investing \$10,000 in the Society.

New York and New Jersey authorized six directors each to site the “principal seat of the manufactories.” Of course, Lowry was one of them. A newspaper notice of those selected by New Jersey appeared on January 26, 1792. It stated:

At a meeting of the Governor and directors of the Society for Establishing Useful Manufacturers held at New Brunswick on the 20th inst., it was resolved that six members be chosen by ballot who, with the Governor, shall be authorized to fix the position of the principal seat of the manufactories of this society. The ballots being taken, the following gentlemen were chose, viz. Alexander Macomb, John Dewhurst, Archibald Mercer, Thomas Lowrey, Benjamin Walker and Elish Boudinot [January 26, 1792].

In May 1792, much to Lowry’s chagrin, the Society chose a site on the Passaic River which it named “Paterson;” however, it may have been a Godsend because the affairs of the Society rapidly disintegrated. Despite its lofty goals, the Society failed to build its manufacturing center for several reasons. The architect/planner’s vision of Paterson was “magnificent but impractical.” The Society lacked the capital to build such a grandiose city. In addition, the Society was defrauded by two of its shareholders. William Duer, a relative of Hamilton, “lost” \$10,000 of the Society’s money; and John Dewhurst who was entrusted with \$50,000 to buy goods on behalf of the Society from England “failed” to procure the goods. The money was never recovered.

On April 6, 1792, the New York directors did not attend a scheduled meeting of the Society’s directors in New Brunswick. The New Jersey directors were alarmed. At that time, General Archibald Mercer, a New Jersey director, wrote to Secretary Hamilton seeking his direction regarding the absence of the New Yorkers. The letter outlines the directors’ concerns. Paraphrasing, Mercer remarked that Hamilton’s advice was considered “of the utmost importance” because “the confusion our affairs appeared to be in, the necessity of restoring the public confidence . . . and the situation of our funds investigated.” In order to transmit this highly controversial letter to Hamilton, the New Jersey delegates entrusted Lowry with the delivery of it, and he was “appointed to wait on you [Hamilton] with this letter, and to take charge your communication on the Subject.”

Although there is no record of what Lowry reported back, it demonstrates that Lowry was an influential player of the Society. In short, Lowry was in the forefront of a unique American experiment to broaden the base of the American economy. Although over time Paterson became an industrial magnet, imagine how different the history of New Jersey would have been, if Lowry’s preferred site “twenty to forty miles north of Trenton” were selected as America’s first manufacturing center!

The Legislative Years

The facts concerning Lowry’s tenure in the Assembly are sketchy. He represented Hunterdon County

from 1790 - 1792. Compared to today, the legislature convened less regularly. In 1790, the Legislature had two houses. The Assembly and the Legislative Council (akin to the Senate). The Assembly was comprised of two members from each county and the Legislative Council had one member from each county. According to minutes of the Legislature, Lowry only voted on a few bills. On one bill, Lowry voted in favor of granting "relief of debtors," which was defeated; and on another, he voted with the majority to authorize Freeholders "to sue and compel persons entrusted with public property to account for same." (It appears times have not changed much in our State!) He also attended a meeting of the Legislative Council as a spokesperson for the Assembly to request that Body meet jointly with the Assembly "to appoint Militia Officers and other Officers of Government."

In summary, Thomas Lowry's accomplishments speak for themselves: Thomas Lowry was a: devoted husband; father of 11 children; successful merchant and land baron; revolutionary war hero; member of the Provincial Congress; member of the State Assembly; Shareholder and director of the Society for Useful Manufacturers; and United States Marshal. Lowry was a trusted friend of George Washington and Alexander Hamilton, and he lived in New Jersey nearly all of his life. His many public and private pursuits evidence his love of the United States and of our great State. He was a patriot in the hardest of times. To those of us who work in the District Court of New Jersey, Lowry serves as a shining example of courage and the can-do attitude it takes to administer justice even-handedly. From all accounts, he did so in a low key, professional manner. Without question, Lowry's most endearing accomplishment is the establishment of the Marshal Service in New Jersey. It serves as his greatest legacy; his guiding hand was instrumental to building public trust and confidence in the system of justice of the United States.

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