

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

Spring 2018

Volume XIX, Issue 1

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HONORING



Ginny Whipple Berkner
Executive Director,
Association of the Federal Bar
of New Jersey



Susan Travis
Executive Director,
U.S. District Court for the D.N.J.
Historical Society

**And the living institution that is the Court
has afforded each of us that rare privilege
most often denied to others, to reach beyond
ourselves in its service.**

— Hon. John F. Gerry, C.J.U.S.D.C.

Ginny Whipple Berkner

At its annual Brennan Award Dinner on June 14, 2018, the Association of the Federal Bar of New Jersey will celebrate the retirement of Ginny Whipple Berkner — its Executive Director for more than two decades. Throughout her exemplary service as Executive Director, Ginny has been a mainstay of the AFBNJ, which in turn, is a mainstay of the Federal Family. In conjunction with the festivities at the Brennan Award Dinner, the Historical Society presents the following tributes to Ginny, made by just a few of those that have been privileged to work with her these many years.

As Chief Judge for the District of New Jersey, I was saddened to hear the news that after 22 years of faithful service to our Federal Bar, Ginny will be stepping down from her position as Executive Director for the Association of the Federal Bar of New Jersey. She is by far one of the most reliable, hardworking, and trustworthy people that I have encountered in my years on the Bench. She has efficiently and quietly accomplished innumerable tasks for the benefit of the Federal Bar and for our Court Family with poise and grace. Her charm, reliability, and hard work will be dearly missed. On behalf of our Court, I thank Ginny for all her help and friendship and wish her the best of luck and Godspeed in all of her future endeavors. She will be greatly missed by all of us. — Chief Judge Jose L. Linares

When the Association of the Federal Bar of New Jersey wisely selected Ginny Whipple as its Executive Director many years ago, it took a large step in enhancing its many activities for the benefit of bench and bar. While the AFBNJ's talented presidents were term-limited to one year, Ginny was the glue who gave the organization continuity and institutional memory. Ginny has been a masterful administrator who attended to the details of the Annual Bench Bar Conference in March and the Justice William J. Brennan, Jr. Award Dinner every June. Each of those occasions draws 400-600 lawyers and Judges because they are worthwhile, fun, and celebratory of our special relationship between the bench and bar. But each has been a success because of Ginny Whipple who was never too busy to greet us by name, tend to our needs, and make it all work. I thank Ginny for her many kindnesses to me over these 30 years and for her amazing service to this Court Family. Like her brother John, she has also honored the memory of her dear father, the great Chief Judge Lawrence Whipple, who not only helped the AFBNJ to flourish but also to promote greater understanding and respect between our beloved court and the members of its bar. Ginny did more than one could ever enumerate to preserve and enhance this legacy. Ginny, thank you and Godspeed. — Hon. Jerome B. Simandle, U.S.D.J.

Since she became Executive Director about 20 years ago, Ginny has been the rock upon which our organization has been grounded. We look back with thanks for her commitment and effort, sadness for her departure, and optimism for the continued success and growth of the organization of which she has been such an integral part for so long. — Mark S. Olinsky, Esq.

I had the honor of being the president of the AFBNJ from 2015-2016. During this time, I worked very closely with Ginny in her role as Executive Director. She was the consummate professional, and I will forever be grateful for her constant support and guidance. Ginny's hard work, tireless efforts, enthusiasm, vision, and commitment to our beloved AFBNJ over the past 32 years is part of our incredible history and legacy. I wish her all of the best, and Godspeed during her well-deserved retirement. — Karol Corbin Walker, Esq.

To me Ginny is the face of the Association of the Federal Bar of New Jersey. She is the institutional memory of the organization and the behind the scene organizer who assures that all runs smoothly. She was an invaluable resource during my term as President. She was always willing and available to assist in any way she could. I once heard it said that "Ability is the art of getting credit for all the home runs somebody else hits." In this context it was Ginny in the background hitting those home runs so that those who she supported could look good! — Lisa J. Rodriguez, Esq.

Editor's Note: Thanks to Corinne McCann Trainor, Esq. for her assistance with the compilation of this piece.

Susan Travis

On December 14, 2017, Susan Travis received the prestigious Donald A. Robinson Award for Meritorious Service to the United States District Court for the District of New Jersey. Susan — who is both a Management Specialist for the Court’s Clerk’s Office, and the longtime Executive Director of the Historical Society — is the ninth recipient of the Robinson Award. Fellow recipients are: the Award’s namesake, Historical Society Chairman Donald A. Robinson, Esq.; James J. Waldron; the Hon. Garrett E. Brown, Jr., U.S.D.J. (Ret.); William T. Walsh; Thomas C. Hnatowski; the Hon. Jerome B. Simandle, U.S.D.J.; Mohung Wong; and the Hon. Patty Shwartz, U.S.C.J. The Award was jointly presented to Susan by Chief Judge Jose L. Linares, Thomas Curtin, Esq., Chair of the Court’s Lawyer’s Advisory Committee, and William T. Walsh, Clerk of the Court. Following presentation of the Award, Historical Society President Keith J. Miller read a heartfelt tribute from Chairman Robinson, who was unable to attend. That tribute is presented below, along with equally-touching words of appreciation from Chief Judge Linares, and immediate past Chief Judge Simandle.

You are a devoted, loyal, talented member of our Federal Family. Despite your busy daily duties as Management Specialist, you have for many years consistently reached beyond yourself in the service of the Court and the Bar. We welcome your creative ideas for not only presenting tributes to Family members, but also for your extraordinary contributions assisting with the Court’s resources in preserving the proud history of our beloved Federal Court.

Susan, you have earned the gratitude of the Bar and the annual Meritorious Service Award. You have our salute of sincerest thanks for a job well done.

— Donald A. Robinson, Esq.

When Susan was selected to receive the Robinson Award in December, no one acquainted with the Federal Court Family could have been surprised. Beyond her regular duties, Susan has worked steadily and effectively to make sure the Court’s many public functions and seminars are effective, well organized, and meaningful to the participants. When I was Chief Judge, for one example, I knew Susan worked night and day to help the Court and the Historical Society to plan and execute the fabulous 225th Gala Anniversary of our beloved Court. More specifically, Susan invaluablely assisted Magistrate Judge Douglas E. Arpert arrange the centerpieces of that event, such as the performances of the West Point Band and the Newark Boys Chorus. In doing so, she helped make that sparkling evening a huge, unforgettable success. Every investiture of a new Judge, every quarterly Judges’ meeting, and each educational offering and commemorative program bears Susan’s fine tuning, tactfulness, coordination, and creative solutions, always with an open, “can-do” spirit that distinguishes our Court’s relationships with the bar and the public. These occasions are not just events but are, for many attendees, an opportunity to reflect on the purposes of our court and the responsibilities we share to do justice. Always fun to work with, and never seeking personal credit, it is so fitting that Susan has received the accolade named for Donald A. Robinson, who so many have regarded over the years as “Mr. Federal Court.” That her selection for this award was the one detail of the Court’s December gathering of which she was unaware made the occasion all the more sweet and memorable.

— Hon. Jerome B. Simandle, U.S.D.J.

I am extremely proud and gratified that Susan Travis was honored as a recipient of the Donald A. Robinson Meritorious Service Award. Susan personifies the very purpose of the award, which recognizes the extraordinary contributions of those who serve the Bench and the Bar of this Court. Her loyalty to this Court, her work ethic, and her abilities as an organizer are second to none, as exemplified by her many contributions behind the scenes to ensure that everything from Judges’ meetings to continuing legal education presentations run smoothly, on time, and are well organized. Contributions for which, as a Chief Judge, I cannot be anything less than extremely grateful. In sum, Susan is the embodiment of the heart and soul of this Court. Congratulations, Susan.

— Chief Judge Jose L. Linares

THE DISTRICT OF NEW JERSEY'S PRETRIAL OPPORTUNITY PROGRAM: AIMED AT REDUCING RECIDIVISM RATES AND GIVING NEW HOPE TO LOW-LEVEL, DRUG-ADDICTED DEFENDANTS

BY: JOHN A. AZZARELLO, ESQ.

The substance abuse epidemic that has plagued our country for decades has negatively impacted all aspects of society. Thousands of young men and women across the country die each year due to drug overdoses. Unfortunately, New Jersey is among the states with the highest rates of substance abuse and deaths attributable to drug overdose.

One of the identifiable and negative impacts of the drug abuse epidemic can be found in a number of criminal cases in the District of New Jersey. Specifically, federal judges, prosecutors, pretrial services officers, probation officers, public defenders and private defense attorneys have encountered many substance abusers who have been arrested and prosecuted for federal offenses directly related to their drug or alcohol addictions. Many people will tell you that, but for those addictions, a good number of the defendants may have lived law-abiding lives. Statistics have also demonstrated substance abusers tend to recommit the same or similar offenses, thereby increasing recidivism rates in New Jersey.

As a result of the drug abuse impact on the federal court system, a large number of reentry drug courts have been established over the past 15 years. The reentry courts are designed to reduce recidivism rates, lower the costs associated with housing prison inmates and assist offenders with histories of substance abuse in reentering society through continued drug treatment. Prime examples of this are the ReNew Courts in Newark and Camden – federal prisoner reentry programs spearheaded, respectively, by District Judges Madeline C. Arleo and Noel L. Hillman. Importantly however, the benefits from participation in reentry courts and programs are received by federal offenders post-sentencing, after a defendant has served his or her prison term or has been sentenced to probation. Criminal law practitioners often refer to this as the “back-end” of the criminal justice system.

Inspired by the Pretrial Opportunity Pilot Program established in the Eastern District of New York in 2012, a Pretrial Opportunity Program (“POP”) was established in the District of New Jersey by United States District Judges Katherine S. Hayden and Esther Salas in late 2015. The POP program is designed to provide more intensive “front-end” supervision and treatment for defendants with substance abuse problems and reduce recidivism. The rationale underlying the creation of the POP program is straightforward: if the drug court model produces benefits in the reentry context, then there is the potential to produce even greater benefits if it is moved up into the presentence phase. Participants in POP should have incentive to succeed since they can avoid, or at least shorten, a potential prison term. Moreover, the cost savings are potentially greater since expensive prison terms may be significantly reduced or avoided altogether. Instead, the hope is for participants to return to their families and com-



“Judge Salas explained that she and Judge Hayden were keenly aware of the drug epidemic plaguing this country, particularly the heroin epidemic plaguing New Jersey. They recognized that the old model did not appear to be working effectively as recidivism rates continued to rise. Therefore, Judges Hayden and Salas as well as U.S. Pretrial Services Agency Chief Christine Dozier worked to identify an alternative way of attacking the drug epidemic and its resultant impact on the federal justice system through the increase of recidivism rates.”

munities armed with the skills and determination to contribute to both, and with their drug or alcohol addictions under control.

In late 2017, I interviewed Judge Salas regarding her involvement in the creation of POP. Judge Salas explained that she and Judge Hayden were keenly aware of the drug epidemic plaguing this country, particularly the heroin epidemic plaguing New Jersey. They recognized that the old model did not appear to be working effectively as recidivism rates continued to rise. Therefore, Judges Hayden and Salas as well as U.S. Pretrial Services Agency Chief Christine Dozier worked to identify an alternative way of attacking the drug epidemic and its resultant impact on the federal justice system through the increase of recidivism rates. When Judges Hayden and Salas learned that a pretrial opportunity program had been created in the Eastern District of New York in 2012, they traveled there to observe that Court's sessions together with Chief Dozier. Utilizing the Eastern District's POP as a model, together they created the criteria for admission to the program as well as establishing all facets of the operation of the program.



Hon. Katherine S. Hayden, U.S.D.J.

To that end, the District of New Jersey's POP program is designed for primarily non-violent defendants with a documented history of alcohol or drug abuse. In order to be eligible for POP, defendants must pose no known danger to the community, the charges they face must be of a non-violent nature and they must exhibit a willingness to participate in treatment and to comply with the extremely stringent conditions of the program. Offenders best suited for the program include those charged with lower level narcotics or property offenses, while those not typically fit for the program include violent offenders, offenders charged with firearms, child exploitation and those with leadership roles in large scale fraud or narcotic offenses.

Defendants can be referred to POP by any judicial officer, Assistant U.S. Attorney, defense counsel or pretrial services officer. In reality, the majority of POP candidates are identified by pretrial services since they have significant contact with substance abuse offenders from the outset of their cases. Once a consensus is reached among U.S. Pretrial Services and the U.S. Attorney's Office, the defendant and his counsel must agree to the conditions of the program and memorialize the agreement through the formal execution of a POP Consent Form. POP candidates cannot be accepted into the program unless and until they first plead guilty. However, the Office of Pretrial Services often identifies potential candidates before their guilty pleas when they are ordered to undergo substance abuse treatment.

Once accepted into POP, the defendant must meet on a monthly basis with the POP team which consists of judges, pretrial services, United States Attorney's Office, Federal Public Defender's Office and treatment providers. The meetings take place in the courtroom in a very informal setting and the judges do not wear their robes. The participants are also required to report to the Pretrial Services Agency. The pretrial services officer maintains frequent contact with each defendant as well as his or her family members and treatment providers. The pretrial officer fills a vital role in this program as the officer provides the team each month with a status report documenting the offender's attendance and progress in treatment and POP goals. The pretrial services officer also verifies on a regular basis the defendant's residence and employment. Therefore, all defendants in need of educational or vocational training or gainful employment must participate in the Pretrial Services Workforce Development Program as directed.





*Chris Dozier
D.N.J. Chief Pretrial Services Officer*

In addition to regularly conducted criminal record checks, defendants are tested frequently for illicit drug and alcohol use. Failure to comply with the goals of the program are reported to the judge and could result in a panoply of sanctions including, but not limited to, more frequent court appearances, geographic or association restrictions, written assignments, travel restrictions, electronically monitored restrictions, curfews and community service. Sanctions are designed to encourage offenders to think about the consequences of their actions, reflect on his or her behavior and to avoid people and places that constitute negative influences. The goal is to motivate the offender to become more involved in the community and avoid the temptation to return to drug use. Failure to comply could also result in termination from the program. However, the judge will not terminate anyone from the program without giving his or her counsel an opportunity to be heard. In addition, a bail violation hearing can be held and, provided the violation is proven, the defendant can face reconsideration of conditions of release including possible revocation of release.

In order to successfully complete the program the offender must remain drug and alcohol free for a minimum of 12 months. If the offender tests positive for drugs or alcohol while in the program, or fails to report for a scheduled drug test without an approved excuse, the judge has full discretion to terminate participation, re-start the 12 month period or impose other modifications. Ultimately, the judge in consultation with the POP team determines if and when a defendant has successfully completed the pretrial phase of POP. If successfully completed, the offender is then transitioned to the sentencing phase. Defendants also continue to participate in POP post-sentencing at the direction of the judge. A judge's decision to terminate an unsuccessful offender's participation in POP is not subject to appellate review.

According to Judge Salas, as of late September 2017, there were approximately twenty offenders accepted into the POP program since its inception in May 2015. Pretrial Services Chief Chris Dozier, Pretrial Services Officers Daniella Guido, Jennifer Pace and John Mueller, Assistant U.S. Attorneys Jake Elberg and Tom Eicher, and Assistant Federal Public Defenders Chester Keller and John Yauch are all assigned to POP. David Sternberg from the United States Probation Office is responsible for writing all the presentence reports for defendants in POP. Once a defendant has completed the program successfully, the PSR is finalized and the defendant is sentenced. While probationary sentences are not guaranteed, Judge Salas confirmed all offenders admitted to POP who had been sentenced as of September 2017 have received probation. Once an offender transitions and successfully completes the POP program, he or she becomes a mentor to the group.

During my interview of Judge Salas she recounted many defendants who have entered the program have sordid histories of abuse and neglect. Judge Salas described how her participation in the program gave her a "firsthand insight" into the lives of drug addicted offenders and how it affects their families. The POP program has already produced great success stories. Judge Salas said she was "invested and incredibly passionate about [POP] because it's the right thing to do." Judge Salas' eyes lit up with joy as she described the success of an individual in POP whose whole family was involved in a large oxycodone scheme. She explained how the offender's mother and brothers were all in jail and how his father had committed suicide by hanging himself. Judge Salas described how the offender survived all of these horrible events, graduated from POP, obtained a job at Roto-Rooter as a supervisor and was being groomed for another promotion. Judge Salas noted prior to encountering POP he had "never worked a day in his life."

AN EXHIBIT

NEWARK AT 350: SETTLEMENT, GROWTH, RENEWAL

BY: ROBERT E. BARTKUS, ESQ., VICE-PRESIDENT OF THE HISTORICAL SOCIETY

From September 2017, through mid-February 2018, visitors to the first floor of the Martin Luther King, Jr. Courthouse in Newark were able to view a unique exhibit of Newark's history created by, and on loan from, the Newark Public Library.

The exhibit, "Newark at 350: Settlement, Growth, Renewal", was originally presented in 2016 at the main building of the Newark Public Library in Washington Park to mark the city's 350th anniversary. Each of the exhibit's approximately 20 panels display a unique period in Newark's history: from Robert Treat stepping ashore with his fellow Puritans; through the Revolutionary War; to the present day – and of course many of the memorable steps in between.

For example, visitors to the exhibit learned that the original religious settlement greatly increased in size and significance after the Revolution. Indeed, aided by the confluence of river and other transportation, Newark became an industrial powerhouse. Its pure water and an influx of German immigrants lead to beer-making facilities, and other groups brought their own unique trades – such as leather making and shoes, chemicals, jewelry, and cotton goods. As the exhibit showed, Newark has long been a city of immigrants, first from Europe, then from the South, and now from other locations around the world. Importantly, the exhibit also depicted the events of July 1967, and the changes that have since taken place.

Visitors were overheard to say "I didn't know that", or in other instances, "Ah, I remember . . ." a particular event in their own lives illustrated in one of the posters. Keith Miller, president of the Historical Society, remarked that the exhibit "provided a fascinating look into the rich history of one of New Jersey's oldest and largest cities. We received many compliments from attorneys, court personnel, and members of the public who viewed the exhibit while they were visiting the Courthouse."

The exhibit was curated by Thomas Anker, a librarian in the Charles F. Cummings New Jersey Information Center at the Newark Public Library. The original Newark at 350 exhibit was made possible, in part, by a project grant from the New Jersey Historical Commission/Department of State, administered by the Essex County Division of Cultural and Historic Affairs.



The "Newark at 350" exhibit on display in the MLK Courthouse

The Historical Society thanks Tom and the Library for their outstanding work on the exhibit and gracious cooperation in permitting it to be viewed by a wider audience while on display in the MLK Courthouse. The introductory poster will be displayed in one of the Courthouse's Lawyer Meeting Rooms.

Notably, the "Newark at 350" exhibit marks the second time the Historical Society has partnered with the Newark Public Library to display an historical portfolio in our federal courthouses – the first, "This Is New Jersey" (NJ 350), was exhibited at all three courthouses from the summer of 2016 to early early 2017. The Historical Society hopes to renew these cooperative efforts in the future as new exhibits become available.

2017 CLARKSON S. FISHER AWARD-WINNING SUBMISSION

BY: AMY M. LEONETTI, ESQ. & STEPHANIE FORBES, ESQ.

The New Jersey Ballot

Tuesday & Wednesday, November 8-9, 1870

Get Out the Vote In Camden!

Today marks the first election since the ratification of the Fifteenth Amendment in February. Today, approximately 7000 wrongfully disenfranchised people will be able to exercise the right to vote for the first time, and their participation in the electoral process is crucial. Several Congressional seats are up for grabs, as well as control of the Legislature, which will determine the next New Jersey Senator.

In this exciting time, everyone is weighing in, including our neighbors across the Hudson. The New York Times praised the Republicans candidates and urged the new voters to “exert themselves to win a glorious victory.”

The paper confidently predicted a Republican victory, expecting the new voters to secure several new seats in Congress and control of the Legislature.

What should have been a momentous and historic event for the thousands of people finally able to vote turned into a nightmare when a mob led by Constable Souders, Justice of the Peace James Henry, and Attorney Samuel Davis attacked the newly enfranchised African-American voters in Camden.

The ringleaders “seeing that the poll was going against them . . . ordered the room in which the election was being held to be cleared of the [African-American] voters, declaring it was time that the white man’s party begin to vote. The [African-American] men, who were on the outside, on attempting to enter, were met by Souders, armed with a pair of revolvers, who commenced an indiscriminate firing upon them, several of our city roughs assisting him with blackjacks and other weapons.” Four men were shot, two in the head. Two of the injured men were Charles Williams and Theophilus Little. The African-American voters were forced to flee the polling place.

Refusing to be denied access to the polls, the voters returned later in the afternoon to continue voting. Unfortunately, Constable Souders and his followers were not finished. “The defeated of the morning, at about 5 p.m. . . . seized the ballot-box, and carrying it into an adjoining field, destroyed its contents completely. Two companies of the Sixth Regiment, National Guard . . . were at once sent to the scene . . . Under the protection of the soldiers the polls were reopened and some 205 ballots deposited, of which only 13 were Democratic.”

“New Jersey is not instinctively Democratic. Her proximity to New York has made her so, but as there is now even hope for that benighted city, her people need only make an earnest effort and their State will be redeemed. Today’s election is their grand opportunity, and they owe it to their best interests to embrace it.

Many hundreds of Republican voters of Camden and Gloucester, our suburbs across the river, transact their business in this city. Upon these we urge the importance of depositing their ballots this morning before crossing the river.” — The Philadelphia Press

The New Jersey Ballot

Monday, April 17, 1871

New Trial In Camden Election Riot Case Denied

Today in the U.S. District Court, District of New Jersey, the Honorable John Thompson Nixon denied Constable Francis Souders' motion for a new trial. Souders was charged and convicted for "unlawfully preventing certain legal voters from freely exercising the right of suffrage" for his participation in the Camden Election Riots on Election Day, November 8, 1870. At least one person, Theophilus Little, died as the result of injuries sustained during the riot. Constable Souders "was engaged in this outrage of expelling the [African-American] voters from the room, and thus preventing them from freely exercising the right of suffrage."

Souders argued that to constitute the offense, the voter must be altogether frustrated in his efforts to cast his ballot, and because many voters ultimately voted, the offense was not committed. Judge Nixon eloquently and rightfully rejected this theory, stating:

It seems to me . . . that such a construction of the statute is too narrow, and that it defeats the purpose which congress had in view in enacting it. This purpose was to protect men in the discharge of their most sacred political privilege. That would be slight protections, indeed, which allows bullies and rowdies to surround the ballot box from the opening to the close of the polls, keeping off all legal voters by threats, intimidation, or force; and then to hold that the offense is not committed, if by chance the hindered voters should avail themselves of a casual opportunity to slip in their ballots when the backs of these vigilant sentinels were turned. And yet this result follows the interpretation asked for here.

No charges have been brought in the death of Mr. Little.



Hon. John T. Nixon
Judge for the D.N.J.
(1870-1889)

Fifteenth Amendment

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition or servitude.

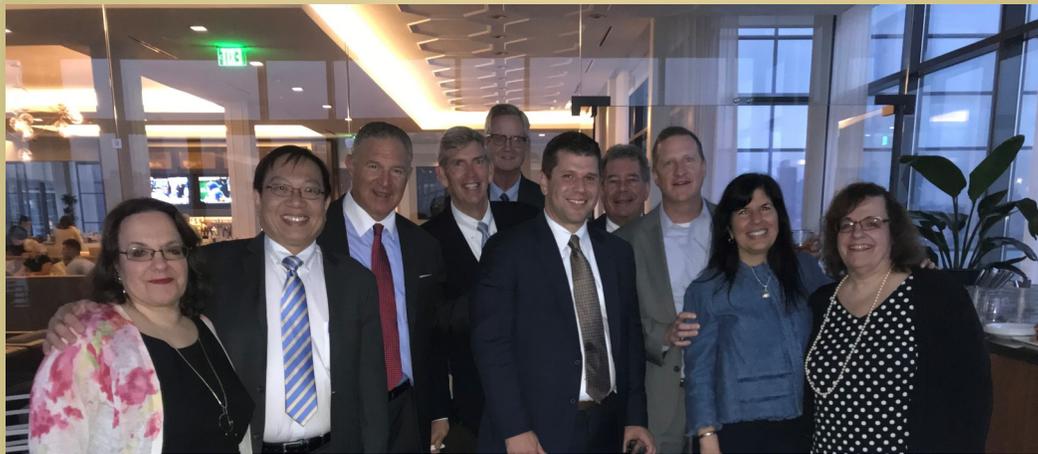
The Congress shall have power to enforce this article by appropriate legislation.

"It is hardly necessary to multiply words upon this point. It is in proof that these five men stood waiting in line before the ballot box with ballots in their hands, intending to vote for certain individuals upon a certain ticket, which they wished to deposit; that while thus standing prepared to exercise and intent upon exercising their right of suffrage, Francis Souders, with others, drove them from the room and shut the doors against them. How can it be said that they were not prevented from exercising their right freely?" *U.S. v. Souders*, 2 Abb. U.S. 546 (D.N.J., April 1, 1871) (Nixon).

Editor's Note: The presentation of this piece has been modified slightly for publication. The prize-winning submission is maintained in the Historical Society's archives, and includes citations to source materials.

Trustee & Judicial Advisor Appreciation Event

On the evening of May 22, 2018, the Historical Society hosted an event to express appreciation for the time and talent that is so generously given by its many Trustees and Judicial Advisors. The event was hosted by Historical Society President Keith J. Miller, Esq. (of course with the invaluable assistance of Gale Raffield), and took place atop the Hyatt House at Exchange Place in Jersey City. Attendees were treated to an informal evening of fellowship that featured panoramic views of lower Manhattan and New York Harbor. As President Miller expressed that evening, the Historical Society is — as always — deeply grateful for the enthusiastic support of the Federal Family.



Photos Courtesy of Mohung Wong

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

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