Federal Bar Council News

February 2001 Vol. VIII, No. 1

From The President

Our Future

By P. Kevin Castel

It is gratifying to speak to former presidents, including Ted Kupferman and Mike Seymour, and take stock of the distance which we, as an organization, have traveled. The luncheons and dinners are larger, the *Redbook* is thicker, the Winter Bench & Bar Conferences are grander and a multitude of innovations have been introduced, such as quality CLE, a fall retreat, and this newsletter. But throughout, we have stayed true to certain goals and principles.

First, we promote fellowship and a sense of community among federal practitioners. For members who work hard on the same or opposite sides of a

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From The Bench

Joining History, With A View To The Future

By Judge Laura Taylor Swain

Poised at the start of a new century, a new millennium, and, for me, a new phase of judicial life, I think it appropriate to look back at achievements and to focus on the challenges that lie ahead.

As an African-American judge and a New Yorker, it is particularly exciting to me to reflect on the history that has been made here, in New York, in the federal judiciary.

Judge Mollison

The first life-tenured African-American federal judge, Irvin C. Mollison, was appointed by President Truman in 1945 to sit in what was then called the Customs Court, located on Varick Street. (It is now the Court of International Trade and sits at Foley Square, opposite the older federal courthouse.) Judge Mollison was born in 1898 in Mississippi, the son of a pioneering African-American lawyer. Brought up in Chicago, where he earned undergraduate and law degrees from the University of Chicago, he practiced law with distinction and served on many professional, charitable, and public boards, including as president of the Illinois State Conference for the Advancement of Colored People. In a letter to President Truman shortly after his appointment, Judge Mollison

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The Government Lawyer

My Time At The FTC

By Molly Boast

The Federal Trade Commission is a small dynamo law enforcement agency with a far-reaching agenda. An independent agency, the FTC is the only federal body with a broad mandate to protect consumer welfare through the twin avenues of consumer protection and competition enforcement. With fewer than 1,000 employees, the FTC is smaller than many of today's law firms and operates on an even smaller budget — approximately $125 million in fiscal year 2000. But even with these limited resources, the FTC achieves spectacular

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From The President

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case or share the bond of former government service, it is a pleasure to have the opportunity to enjoy each other's company and work side by side on worthwhile projects. Fellowship, or dare I say friendship, promotes civility and professionalism which serve clients well and reduce stress, thereby leading to longer life spans. Even though we are lawyers and adults, we, too, are entitled to have fun.

Second, we foster understanding between bench and bar and strive to promote a strong and independent federal judiciary which is equipped with the resources to fulfill its constitutional functions. Particularly in view of this goal, it is important that, unless our core values as an organization are at stake, we stay removed from the political or quasi-political fray into which other bar groups may venture.

Third, we service the needs of our members. This is accomplished through the *Second Circuit Redbook*, through our fine CLE programs, the Appellate Advocacy Workshop, and through valuable reports on topics of interest prepared by our Second Circuit Courts Committee.

Finally, remembering the call of Judge Lasker in his acceptance of the Learned Hand Award and remaining faithful to our other goals and principles, we endeavor to use our talents in service of the public. It was our former president Tom Evans who, with the assistance of the Federal Bar Council, launched the Mentor program, the partnership betwe(the New York City Schools and law firms.

In furtherance of these goals, we have been busy at work:

- Paul and Joyce Hanly have planned a wonderful Bench & Bar Conference at St. John in the U.S. Virgin Islands. Circuit Judge Dennis Jacobs and his Planning Committee have assembled an outstanding array of programs with a distinguished roster of panelists. The 2002 Winter Bench and Bar Conference at the Westin Rio Mar in Puerto Rico (February 16-23, 2002) will be chaired by Joan Wexler.
- We will have a reception to honor the new Chief Judges of the Second Circuit in the Southern and Eastern Districts, as well as newly-inducted judges, on Wednesday, April 4, 2001 at the Union League Club. Margie Peerce and Charlie Platt have agreed to chair this event.
- The sense of community is fostere by honoring persons whose accomplishments are worthy of emulation. At our Winter Meeting, former FBC president Bernie Nussbaum

From Circuit Clerk Roseann B. MacKechnie

Practice Tips

The Second Circuit is in the process of developing its own Web site, which ultimately will be a great source of information. Until then, here are some other ways to get information from the court to save you time and aggravation.

1. Once your case arrives at the Second Circuit, you will receive a Docketing Letter that includes the Docket Number assigned to your case and the name and phone number of the case manager to whom your case has been assigned. The case manager is the best source of information about your case.
2. If you have questions about a case before your Docketing Letter arrives, you may wish to call the intake team. That team handles all incoming appeals and documents. The Intake Team's number is 212-857-8503.
3. You also can get docket information in Room 1803 in the Clerk's Office at 40 Foley Square. That's where we maintain computerized docket sheets dating from July 1989. Most pre-1989 docket sheets are on microfiche in Room 1803 and you may view them there without charge. In addition, computer terminals in Room 1803 provide free viewing of all docket sheets. You'll need to know the docket number or the case name.
4. The Appellate Bulletin Board Service (ABBS) also provides access to all computerized docket sheets, published opinions, summary orders, calendars, and general court information via modem by dialing 212-857-8650. The Judicial Conference of the United States imposes a user fee of 60 cents per minute, and first time users must receive a login ID from the centralized billing center by calling 1-800-676-6856.
5. You can also access published opinions and summary orders, usually within 24 hours after filing, on the Internet in cooperation with Pace Law School (URL http://www.pace.law.edu) and Touro Law Center (URL http://www.tourolaw.edu).
6. Finally, of course, you are always free to call the general number of the Clerk's Office: 212-857-8500.

Please note a correction to last issue's practice tip Number 5. The size of the pages in a pamphlet brief is: 6 1/8 by 9 1/4 inches. Please consult FRAP 32(a).

will receive the Whitney North Seymour Award for outstanding public service by a private practitioner and on Law Day, May 1, 2001, the Learned Hand Medal for excellence in jurisprudence will be presented to Justice Anthony M. Kennedy. Chief Judge Walker will present the Medal and Loretta E. Lynch will chair the dinner.

• A sense of community is also promoted by historical projects, such as courthouse displays and works such as *The Remarkable Hands, Glimpses of Walter Mansfield,* and *Edward Weinfeld: A Judicious Life*. I have asked Marty Glenn to keep this tradition going by forming a committee to explore the possibility of a work on the life of Judge Henry J. Friendly.

I have also asked our Long Island members to form a committee devoted to the needs and concerns of practitioners at the new federal courthouse in Central Islip. I have asked Anton Borovina and Burt Ryan to spearhead this effort. A planning meeting held at the Central Islip courthouse on January 23 was well attended.

• Rich Rothman and the distinguished roster of the Public Service Committee are working with the Public School Partnership to explore educational projects for young people. They have also begun a pro bono clearinghouse for our members.

• Former FBC President John Kenney has assisted us with our first United States Supreme Court *amicus curiae* filing. We have taken a position in support of the ruling of the Court of Appeals for the Federal Circuit which held that 1983 legislation imposing social security taxes on then sitting federal judges violated the Compensation Clause of the Constitution.

• Bob Anello is planning a field trip to Yankee Stadium early this spring. A report on developing common law interpretations of the infield fly rule is expected.

• Stu Summit and his subcommittee will be introducing a new program format —a roundtable luncheon at the Moynihan Courthouse with speakers of interest to our members. Jerry Walpin continues to plan well attended CLE programs such as the December 12 program on the recent amendments to the Federal Rules.

• Pete Eikenberry and the Second Circuit Courts Committee, on the heels of a successful fall retreat and a recent visit to the committee by Circuit Judge Sonia Sotomayor, are presently working on a number of reports.

• Barrie Goldstein is organizing the second Federal Criminal Practice Institute which, through training, hopes to qualify more minorities and women for CJA panels. The Institute, which is conducted jointly with New York County Lawyers, will be held on May 17-19. We have received widespread assistance from members of the judiciary.

Our membership and board have a host of great ideas for the Federal Bar Council and its educational and charitable arm, the Federal Bar Foundation. To maintain and expand these programs, we must grow in membership. Please call the Federal Bar Council Office, 212-883-1777, to obtain membership applications.

A special thanks to those law firms who have unselfishly answered the call to contribute to the Federal Bar Foundation to permit this organization to continue on its path. To date, the firms who have answered this call include: Abbey, Gardy & Squitieri, LLP; Cahill Gordon & Reindel; Coblence & Warner; Davis Polk & Wardwell; Fried, Frank, Harris, Shriver & Jacobson; Goodkind Labaton Rudoff & Sucharow; Hogan & Hartson L.L.P.; Landman Corsi Ballaine & Ford PC; Lankler Siffert & Wohl; Patterson, Belknap, Webb & Tyler LLP; Robinson Silverman Pearce Aronsohn & Berman LLP; Rosenman & Colin; Simpson Thacher & Bartlett; Solomon, Zauderer, Ellenhorn, Frisher & Sharp; Stillman Friedman PC; Stroock & Stroock & Lavan, LLP; Sullivan & Cromwell; Swidler Berlin Shereff Friedman, LLP; and Wachtell, Lipton, Rosen & Katz. I have asked Len Novello to spearhead our efforts to increase such funding support.

If you have an idea or a suggestion, I hope you will contact me (castel@cahill.com). We are a strong and successful organization, but to remain that way we must encourage new members and be open to innovation.

The Government Lawyer

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results. I was privileged to join the Commission in July 1999 and now serve as Director for the Bureau of Competition.

About The Commission

Congress enacted the Federal Trade Commission Act in 1914 to establish a bipartisan tribunal charged with preventing unfair methods of competition. Congress acted against the backdrop of an economy marked by dominant firms such as the railroad, oil, and steel trusts, and a flurry of mergers. Early judicial interpretations of the Sherman Act, which had been enacted in 1890, gave rise to concern that absent new legislation, antitrust enforcement would languish. The breadth of the FTC Act reflects that concern.

The Commission remains a unique entity. Its five Commissioners are

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appointed by the President and confirmed by the Senate to staggered seven-year terms. No more than three Commissioners may be from any one political party. Today's Commission, chaired by former Georgetown Law Center Dean Robert Pitofsky, consists of three Democrats and two Republicans.

The FTC is both a law enforcement agency and an adjudicative body. Its enforcement arms, the Bureau of Competition and the Bureau of Consumer Protection, may bring actions either in federal district court or in the Commission's administrative tribunal, where cases are tried before the Commission's administrative law judges. In FTC administrative litigation, the record created before the ALJ forms the basis of the Commission's decision, which may be appealed to any of the federal courts of appeal.

The Bureau Of Competition

The Bureau of Competition undertakes investigations of actual or threatened anticompetitive conduct, makes enforcement recommendations to the Commission, and conducts litigation once authorized by Commission vote to do so. The Bureau's work encompasses both merger review (and related enforcement actions) and non-merger enforcement. The Bureau operates with about 460 employees and a budget in fiscal year 2000 of $59 million, but manages its enormous litigation caseload through only about 125 lawyers.

The merger wave of the last few years has forced an increasing share of the Bureau's resources to be devoted to merger enforcement. Under the Hart-Scott-Rodino Act, parties to mergers of a certain size and structure must file premerger notification forms allowing the FTC and the Department of Justice to review prospective transactions for competitive issues prior to consummation. Premerger filings more than tripled from 1,529 in FY 1991 to more than 4,900 in FY 2000. Even more significantly, the dollar value of reported transactions increased eleven-fold in the same period, from $169 billion to $1.9 trillion. Today the Bureau reviews mergers of ever-increasing scope and complexity.

The FTC's competition enforcement actions involve markets of huge importance to consumers, including oil, natural gas, pharmaceuticals, medical devices, food and supermarkets. By way of example, the Commission recently took two enforcement actions in the oil industry and achieved record-breaking results. In the Exxon/Mobil merger, th largest industrial merger in history, the Commission required the divestiture of more than 2,400 retail gas stations, most of them along the East Coast, in gasoline markets affecting more than 40 percent of all Americans. In the BP/ARCO merger, in which I led the litigation team, the Bureau commenced a preliminary injunction action in federal district court, and accepted on the eve of trial the divestiture of assets estimated to be worth more than $7 billion, the largest dollar value divestiture ever in merger enforcement.

The Bureau of Competition's twenty-five or so merger investigations pending today include the proposed mergers of Dow Chemical/Union Carbide, SmithKline Beecham/GlaxoWelcome, Philip Morris/Nabisco, Chevron/Texaco, and General Mills/Pillsbury. The Bureau obtains enforcement results in about 75 percent of the mergers it chooses t investigate fully.

Even with limited resources to devote to nonmerger antitrust enforcement, the Bureau's recent results have been

Calendar of Events

April 4

Reception in honor of Chief Judges Walker, Mukasey and Korman, and newly inducted judges, Union League Club, 6 to 8 p.m.

April 12

Lawyers Under Investigation: Are Prosecutors and Defense Lawyers Simply "Doing Their Jobs"? 500 Pearl Street, 5:30 to 7:30 p.m.

May 1

Law Day Dinner and presentation of Learned Hand Medal to Justice Kennedy, Plaza Hotel

May 17-19

Federal Criminal Practice Institute at New York County Lawyers

For further information about any of these events, please call the Federal Bar Council office at 212-883-1777

stunning. Offering concrete proof that we deliver returns to consumers that are multiples of our modest budget, the Bureau recently settled a case against Mylan Laboratories for $100 million in consumer redress — a very high return measured against the $120 million harm alleged in the complaint. We also obtained consent agreements against the five major music CD manufacturers, requiring abandonment of price advertising restrictions they had imposed on retailers in this $15 billion retail market. Amidst much press fanfare, last June we opened an investigation into the causes of rapidly-escalating gasoline prices in the Midwest. The Commission estimates that the Bureau's FY 2000 competition enforcement efforts helped save consumers an estimated $1 billion in lower prices.

About My Job

The Bureau of Competition Director, along with two deputies, oversees the entire law enforcement output of the Bureau. The position requires, in no particular order, management and morale-building skills, litigation skills, and antitrust skills. Our staff work incredibly long hours on some of the most analytically challenging cases I have ever seen, and confront some of the best lawyers I have known. The Bureau's prodigious output is a testament to staff's dedication to preventing anticompetitive consumer harm.

In addition to overseeing the Bureau's enforcement agenda, my position entails managing several other constituencies. The five Commissioners, each of whom has his or her own staff, must be persuaded to accept Bureau enforcement recommendations, else our work passes unnoticed. Congress is another constituency, whose inquiries about specific cases and our broader enforcement priorities, requests that we investigate particular practices, and treatment of FTC appropriations presentations, require frequent briefings and occasional testimony on the Hill. The press is yet another constituency, one with which we perform a delicate balance in helping it understand the significance of the Commission's competition work while protecting confidential investigative information.

We work closely with our counterparts in Europe and other countries not only in coordinating efforts when a specific enforcement action is under consideration, but also through broad policy discussion vehicles such as the European Community-U.S. Mergers Task Force, of which I am a member. We also work closely with our sister agency, the Antitrust Division of the Department of Justice, on matters of domestic competition policy, such as last year's promulgation of the agencies' Competitor Collaboration Guidelines, and on negotiation and implementation of international enforcement cooperation treaties.

Last, but most certainly not least, the business community and private bar comprise a constituency. In my experience, any effort we can make to increase the transparency of the Commission's work is well-rewarded. For this reason, we in the Bureau of Competition spend as much time as our workload permits speaking before business, law, economics and policy

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Federal Bar Council News (ISSN 1075-8534) is published February, April, June, October, and December for $7.50 per year by the Federal Bar Council, 370 Lexington Avenue, Suite 1012, New York, N.Y. 10017-6503, (212) 883-1777. Periodicals postage paid at New York, N.Y. POSTMASTER: Send address changes to Federal Bar Council News, 370 Lexington Avenue, Suite 1012, New York, NY 10017-6503. Copyright 2001 by Federal Bar Council. All rights reserved. This publication is designed to provide accurate and authoritative information but neither the publisher nor the editors are engaged in rendering advice in this publication. If such expert assistance is required, the services of a competent professional should be sought.

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organizations, and writing for and giving interviews to publications likely to reach target audiences.

The richness and breadth of my responsibilities make my FTC position the most satisfying professional experience I have had. As Bureau management, I make tough decisions every day with far-reaching consequences for consumers and the Commission's competition enforcement agenda. The weight of this responsibility begs for a collaborative working model in which I can confront the challenges of the job surrounded by staff I respect, admire, and enjoy.

From The Bench

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acknowledged not only the high individual honor he had received but also "an important and significant recognition of the worth and usefulness of colored Americans."

A grand total of two more African-Americans were appointed to Article III judgeships during the remainder of the Truman administration and the entire Eisenhower Administration.

Article III Judges

The next Article III appointee in New York was Thurgood Marshall, who was named in 1961 by President Kennedy to serve on the Second Circuit. The only other African-American ever appointed to a circuit judgeship before him was William Hastie, whom President Truman had appointed to the Third Circuit in 1950, some 11 years before. Since the 1940s, Judge Marshall's pioneering civil rights work as Director-Counsel of the NAACP Legal Defense & Education Fund, Inc., had been based in New York. His appointment to the circuit was a recess appointment and was not confirmed by the Senate until over a year later, in November 1962. He left the bench in 1965 to become Solicitor General of the United States under President Johnson and, as we all know, became the first African-American Justice of the Supreme Court of the United States in 1967. This circuit had the honor of being Justice Marshall's responsibility until his retirement from the Supreme Court in 1991.

Constance Baker Motley became the first African-American woman Article III judge in 1966, after a distinguished career as the principal trial attorney for the NAACP Legal Defense and Education Fund, New York's first African-American woman state Senator, and Manhattan's first woman Borough President. In 1982, she became the first African-American and first woman Chief Judge of the United States District Court for the Southern District of New York. I had the great honor of starting my own law career with service as one of her law clerks in that year, and have had the privilege of her friendship since. I must confess to a tense moment when I told her, in 1991, that I was marrying a man whose name is Swain. I hadn't focused on this before then, but *Swain v. Alabama* was the only one of her ten Supreme Court arguments as a lawyer in which the Court had ruled against her. She decided she could live with the name rather quickly, though, since *Swain* had by then been overruled in *Batson v. Kentucky*, giving her a 100% win record on important civil rights issues.

Henry Bramwell became the first African-American judge in the Eastern District in 1974; Amalya Kearse was confirmed as the first African-American woman on the Second Circuit in 1979.

Judge Motley and Judge Kearse continue to serve with distinction on the federal bench in this city, along with Judge Robert Carter, who was appointed in 1972, and Judges Deborah Batts, Barrington D. Parker, Jr., and Sterling Johnson, who were appointed during the 1990s. Lawrence Pierce, who joined Judge Kearse on the Second Circuit in 1981, retired in 1995 and Judge Mary Johnson Lowe, who had joined Judge Motley on the Southern District bench in 1978, passed away in 1999. Judge George Daniels and I were appointed in the year 2000, bringing the Southern District's active African-American Article III judge count back up to its all-time high total of four. Magistrate Judges Ruth Washington, Ronald Ellis, Kevin Fox, and George Yanthis have served with distinction in the Southern District, as does Bankruptcy Judge Cornelia Blackshear.

I had the honor of becoming the first African-American woman judge at any level in the Eastern District, and the first African-American woman bankruptcy judge in the Second Circuit, in 1996. Judge Motley swore me in as a district judge on September 20, 2000, so I have a tiny berth on this wonderful historic train of progress.

Law Enforcement

On the federal law enforcement front, the two most recent United States Attorneys for the Eastern District of New York—Zachary Carter and Loretta Lynch—are respectively, to my best knowledge, the first African-Americans to serve as chief federal prosecutors in New York.

So we have all of these wonderful firsts, each of which opened more doors (or at least should), to look back on as we enter the new century. Let's put them into historical context, though, as an aid to reflection on how far we have yet to go as a society.

The American colonies declared independence in 1776. Slavery was written into the 1787 Constitution—"we the people" most emphatically did not include people of color (or women, for that matter). A bloody civil war had to be fought to end slavery. Constitutional amendments, decades of legal struggles, suffering, civil disobedience, and more were required to end official segregation and change a culture that sanctioned public lynchings of those who were perceived to have transgressed color lines.

The life-tenured federal judiciary never had a black member until 1945—13 years before I was born. Of the more than 2,800 presidentially appointed judges and justices who have served since 1789, nly about 135 have been African-American. Now that I have been elevated, there are only eight African-American bankruptcy judges (two of whom are women) in the country.

So as much as progress has been made, much more remains to be achieved, in society and in the ranks of the judiciary alike.

Particularly in the last third or so of the twentieth century, we have seen the fruits of the civil rights and women's movements, especially in far more diverse public imagery and social norms, and a marked increase in diversity at many levels of government and private business.

We can never afford complacency, and changes in legal and social norms could slow or alter the nation's course toward an increasingly inclusive society in which there is opportunity for all. Specifically, many of our social gains were made at a time when "politically correct" norms were far more oriented to collective action and responsibility than they are now. The Supreme Court's recent states' rights decisions, particularly in the sovereign immunity area, change radically settled assumptions regarding private civil litigation as a means of enforcing federally-recognized rights, including in the discrimination area. Government lawyers may become effectively the principal gatekeepers and — to the extent cases are brought — litigators where state violations of individual rights are alleged. Assumptions regarding the role of the national government in the voting rights area have similarly been turned around by recent decisions; search and seizure jurisprudence is developing along new lines as well.

Technology, too, is a two-edged sword, offering both enormous potential for advancement and the potential for exclusion of large segments of our society from information and opportunities. We face as a society the looming challenge of a technological gulf between rich and poor, one that may also be defined starkly by skin color, national origin, or both. Families whose current work does not require computer or Internet skills may not be able to recognize or share effectively with their children the need for such skills in the new economy. Even families who see what needs to be done may not have meaningful access to equipment or training. Our public schools, in particular, are tremendously challenged in their ability to attend to these needs. I urge everyone to think seriously about helping children gain the skills they need to participate productively in American society in this new century. That can be by volunteering as a tutor in your local public schools or—better yet—in a less affluent part of town, donating your used personal computer equipment, or just helping a child or a family in need. Those of us with skills can help to make a real difference in access to opportunity in our lifetime.

Special Roles

I would like to reflect for a moment on the special roles that the judiciary, prosecutors, and lawyers in general serve in modern society. Judges and prosecutors are, in my view, the principal high-stakes points of interface for discretionary interaction with government, on personal issues, for most people. In other words, we are potentially the scariest faces of government. We must not only be scrupulous in our attention to truth and legal accuracy, we must never lose sight of the personal and broader societal ramifications of our decisions, whether prosecutorial or adjudicative. We hold a public trust, a responsibility to provide leadership in legal excellence and moral rectitude, in unbiased action on behalf of the people. Lawyers are, and always have been, the holders of a special privilege, the keys to that arcane kingdom of the law. Clients, who are often friends and neighbors, depend on lawyers for access to the legal system, for protection of their rights, for many of the tools it takes to gain and hold ground in a competitive, often discriminatory society. This, too, is a precious public trust, and I urge you all to strive as hard as you can not only to improve your own lives, skills and opportunities, but to serve those who are struggling as well. And help each other—one of the simplest, but most important things Judge Neil Blackshear ever said to me was, "Don't worry about me, just do it for someone else," when I tried to repay one of his many kindnesses.

And so, in our daily work, our hiring, our decision making, in everything we do, let us all challenge ourselves to be examples of what America should continue to become — proud and respectful of all her people, giving help

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where help is needed, and making real the promise of liberty and justice for all.

Author's Note: Much of the historical information presented in this piece was drawn from materials prepared under the auspices of the Just the Beginning Foundation and/or from the FJC Web site. The Just the Beginning Foundation is an organization of judges, lawyers, and other citizens dedicated to celebrating the integration of the federal judiciary and promoting diversity on the bench and in the legal profession. This article is adapted from remarks delivered last year at a Black History Month Program sponsored by the United States Attorney's Office for the Southern District of New York and at the induction of officers of the Metropolitan Black Bar Association.

Second Circuit News

Griesa Portrait Unveiled

By Kelly Tsai

The United States District Court for the Southern District of New York recently held a ceremony to honor Judge Thomas P. Griesa, and to unveil his portrait, which will hang in the courthouse at 500 Pearl Street.

Judge Griesa served as the Chief Judge of the Southern District from 1993 until March of last year. Among his many judicial and administrative achievements was the design and construction of the new Daniel Patrick Moynihan United States Courthouse at 500 Pearl Street.

At the ceremony presided over by Chief Judge Michael B. Mukasey, the portrait of Judge Griesa was unveiled. The portrait was painted by Thomas Loepp of Brooklyn, who also painted the portrait of Chief Justice William H. Rehnquist that will hang in the United States Supreme Court when the Chief Justice retires. Judge Griesa's portrait was donated by the Judge's staff and former law clerks.

Speaking at the ceremony were District Judge Robert W. Sweet; P. Kevin Castel of Cahill Gordon & Reindel, on behalf of the Federal Bar Council; Guy Struve of Davis Polk & Wardwell, Judge Griesa's former law firm; and Mark Goldey, who clerked for Judge Griesa from 1997 to 1998. Judge Sweet commented that Judge Griesa developed into a judge with a "deft political touch." Messrs. Castel and Struve both emphasized Judge Griesa's graciousness and modesty, and Mark Goldey spoke warmly on behalf of Judge Griesa's sixty-seven former law clerks and staff members. Approximately one-third of Judge Griesa's former law clerks were in attendance at the ceremony.

Judge Griesa responded with thanks to all present, and said that he and his wife, Chris, viewed the ceremony as "an opportunity to have a reunion with good friends."

Second Circuit News

Courthouse Renamed For Senator Moynihan

By Victoria M. Vazquez

On December 4, 2000, the United States Courthouse at 500 Pearl Street was renamed the Daniel Patrick Moynihan United States Courthouse. To mark the occasion, a ceremony was held in the 9th floor courtroom of the newly renamed courthouse.

Speakers at the ceremony included Chief Judge Michael B. Mukasey of the United States District Court for the Southern District of New York, Chief Judge John M. Walker, Jr., of the United States Court of Appeals for the Second Circuit, Mayor Rudolph W. Giuliani, Senator-elect (now Senator) Hillary Rodham Clinton, Senator Charles E. Schumer, United States Representative Jerrold Nadler, and Robert Peck, Commissioner of Public Building Services.

The ceremony began with Chief Judge Mukasey thanking the Second Circuit, District Court, International Trade, Magistrate, and Bankruptcy Judges along with numerous governme officials and hundreds of Moynihan admirers for attending the ceremony. Chief Judge Mukasey explained that after the various speeches the ceremony would continue outside where the new courthouse plaque would be unveiled.

Speakers at the ceremony recalled Senator Moynihan's extraordinary career in public service. In particular, various speakers noted that Senator Moynihan had served for four years on New York State Governor Averell Harriman's staff and then went on to serve in the U.S. Department of Labor as assistant to Secretary Arthur J. Goldberg, and later as Assistant Secretary of Labor for Policy Planning and Research. Chief Judge Walker noted that prior to entering the Senate, Senator Moynihan served in the Cabinets of Presidents Kennedy, Johnson, Nixon, and Ford and that by doing so, Senator Moynihan became the only person in American history to serv in four successive administrations. Senator Moynihan's years in public service also included a U.S. Ambassadorship to India from 1973 to

1975 and a position in the United Nations from 1975 to 1976.

Senator Moynihan was elected to the Senate in 1976 and was re-elected in 1982, 1988, and 1994. During his terms, he served as the Ranking Minority Member of the Senate Committee on Finance, having earlier served as chair of the committee. Additionally, he was a member of the Senate Committee on Environment and Public Works, the Senate Committee on Rules and Administration, and the Joint Committees on Taxation.

Throughout the ceremony, each speaker commented on Senator Moynihan's dedication to public works. Robert Peck stated that for the past 40 years, Senator Moynihan has been the patron saint of public works and pointed out that Senator Moynihan was instrumental in obtaining funding for the Erie Canal, restoring the Custom House, and building the Southern District Federal Courthouse. Peck concluded by stating that Senator Moynihan's name on the courthouse "was done the old fashioned way — he earned it." Senator-elect Clinton also noted that "Senator Moynihan's size 12 shoes are too big for me to fill, but I will try to continue his commitment to public works."

Senator Moynihan's Speech

After the speeches were concluded, Senator Moynihan, who was joined by his wife, Elizabeth Brennan Moynihan, thanked the crowded ninth floor courtroom for its applause and proceeded to discuss the importance of the relationship between the Senate and the Judiciary. Senator Moynihan noted that upon his election to the Senate in 1976, he worked to change the judicial selection process to a more impartial one. To this end, a Judicial Panel consisting of Democrats and Republicans was created to screen candidates, and only those candidates who were recommended by the panel would be considered for nomination to the federal bench. Senator Moynihan concluded by stating that "nothing is more important than justice and nothing in justice is more important than it be equal, impartial."

After Senator Moynihan's speech, the ceremony continued outside where a red, white, and blue bunting was removed to reveal the engraved plaque above the courthouse entrance that said, "Daniel Patrick Moynihan Courthouse."

FBC News

Inn Of Court Begins To Meet

By Bennette Kramer

The Federal Bar Council-sponsored Inn of Court, which was described in an article in the December 1999 issue of the *Federal Bar Council News*, has begun to meet.

Lee Richard and Arthur Greenspan and a core group, including Judge Denise Cote, Steve Edwards, Don Kempf, Len Novello, Pete Putzel, John Siffert, Frank Velie, and Paul Vizcarrondo, urged on by Betsy Plevin and John Kenney during their tenures as President of the Federal Bar Council, devoted an extraordinary amount of time to planning and organization before the first meeting. They assembled an enthusiastic group of judges, lawyers, and law professors who have put together four programs so far.

Each of the approximately 90 members of the Inn of Court is assigned to one of eight teams composed of 12 to 14 members each. Each team has approximately equal numbers of three levels of participants — Masters, Barristers, and Associates. Masters include judges, law school professors, and persons who have been practicing more than 15 years. Each team is headed by a judge and three Masters. This group does the initial planning and program development, which the team as a whole then implements. The other team members are Barristers, a group including lawyers who have been practicing less than 15 and more than five years, and Associates, who have been practicing five years or less.

The Inn of Court is intended to provide mentoring for junior lawyers along with an introduction to federal practice. It also provides an opportunity for more senior lawyers to meet with judges and to exchange ideas and opinions in an informal atmosphere. The members have participated enthusiastically in the initial Inn of Court presentations. As the members have gotten to know one another better there has been a greater exchange of ideas during the presentations. The excitement has spread outside the Inn of Court, because there is now a long waiting list for membership.

Each team must make a presentation during the year. The format requirements are flexible. The topics to date have ranged from federal practice issues to witness preparation and eyewitness identification. Each presentation has included an ethical focus which has led to an exchange of views between judges and lawyers on ethical issues. Each meeting begins and ends with cocktails, which allows judges and lawyers to socialize in an informal setting. The presentations so far have been lively and informative.

The presentations began in September with a special program entitled "Legal and Ethical Issues at the End of

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Life—Dying in New York," moderated by Alan Fleischman, M.D. This program was organized by the Inn of Court officers, not one of the teams. The panelists included lawyers, doctors, a minister, and two Second Circuit judges — the Honorable Sonia Sotomayor and the Honorable John M. Walker, Jr. The panel discussed a number of issues including euthanasia, continuation or cessation of medical treatment, and other measures to prolong life. Concerning the continuation of medical treatment in New York, the Court of Appeals has held that if a person had stated, while still competent, that he or she does not want life prolonged by means of a respirator or other means if there was no hope of recovery, medical treatment could be discontinued. The discussion was lively and intense.

The team headed by Southern District Court Judge Leonard B. Sand presented the October program, which was a federal practice version of the television program "Who Wants To Be A Millionaire." The Sand Team had obtained the remote controls and other equipment used on the program. Questions were posed to a panel picked at "random" from the audience. The rules were similar to those on the television program, which allowed the panel to consult the audience from time to time. The questions were challenging and the game format fun.

Eyewitness Identification

In November, the team headed by Eastern District Court Judge John Gleeson presented a program on "Human Memory in the Courtroom," featuring eyewitness identification. The program began at the October meeting with an altercation between a man and a woman in the audience. Following the altercation, members of the audience wrote out statements about the altercation and handed them to Gleeson Team members. During the intervening month, members of the Gleeson Team questioned each person who had submitted a statement and asked each to identify the participants in the altercation from photo displays. Although a large number of those questioned were shown photo displays that did not include pictures of the participants in the altercation, many nevertheless identified the "participants" in the altercation.

The program at the meeting in November was divided into two parts. First, Associate members questioned "witnesses" about their prior identification of the participants in the altercation. Then Gary L. Wells, Ph.D., an expert in eyewitness identification, spoke about memory and the hazards of eyewitness identification. The program overall alerted all participants to the dangers inherent in eyewitness identification and the degree of suggestibility inherent in the process. Dr. Wells demonstrated how eyewitness identification procedures could be tainted and then presented recommendations for reliable identification procedures.

The team headed by Eastern District Court Judge David Trager presented the January program on witness preparation. The team combined videotape demonstrations with discussions on the law. Members of the team, including Judge Trager, showed great acting skills on the videotape, demonstrating ethically ambiguous witness preparation scenarios. The issues presented included preparing a witness whose memory has been impaired by a stroke; the effect of allowing a third person to participate in preparation sessions; suggesting answers to witnesses through a review of the law or discussion of other evidence including other witnesses or expert opinions; leading a witness to come to an answer to a question which differed from his or her original answer; pushing a witness to a particular answer; and how a lawyer should respond when he or she knows the witness is lying. In each instance the Trager Team members making the presentation made sure that the audience was informed of the law. The Inn members in the audience actively participated in a lively discussion of the issues as they were presented. Although there was disagreement concerning the correct approach to witness preparation in each instance, and what was ethically correct on every issue, the exchange was lively, courteous, and constructive.

Future Programs

Programs planned for the rest of this year include a February presentation by Judge Deborah Batts' team on opening statements, a presentation in March by Judge Frederic Block's team on the death penalty, an April presentation by Judge Lewis Kaplan's team on Internet privacy, and a presentation in May by Judge Denise Cote's team on the Trial of Galileo. The year will wrap up with a dinner in June featuring a discussion between District Judge Constance Baker Motley and her former law clerk District Judge Laura Taylor Swain, which will give a very human character to the mentoring that the Inn of Court hopes to further.

FBC Program

New Federal Rules

By Charles Platt

The Federal Bar Council recently held a very informative seminar on the

new amendments to the Federal Rules of Civil Procedure and Evidence. Those amendments, which went into effect on December 5, 2000, contain significant revisions that require careful study.

The panel discussing the new rule revisions included Judge Shira S. Scheindlin, Judge Alvin K. Hellerstein, Professor Daniel J. Capra, Sheila L. Birnbaum, Sol Schreiber, and Gregory P. Joseph, who served as the moderator. The discussion was supplemented by an excellent "preliminary analysis" of the amendments written by Gregory Joseph, which provided a thorough description of each rule change and its practical effect.

Civil Procedure

The more important amendments to the Federal Rules of Civil Procedure fall into the categories of confidentiality, mandatory disclosure, and the length of a deposition.

Rule 5(d) has been revised to affirmatively bar the filing of discovery materials. Although the rule appears insignificant, the panel pointed out that this bar may make it more difficult for the press or the public to get access to discovery materials. Since there is no longer a presumptive right to see discovery materials filed with the court, the burden of proof has shifted from those resisting disclosure of discovery materials to those seeking those materials.

The initial "mandatory disclosure" requirement in Rule 26(a) has been revised to provide for more limited discovery than previously required. Now, parties only have to disclose initially the identities of parties and witnesses "that the disclosing party may use to support its claims or defenses," unless solely for impeachment. If this new mandatory disclosure is not made, the information may well be excluded under Rule 37.

The panel pointed out that these requirements may be more limited than the prior "mandatory disclosure" rules, but they nevertheless create "traps for the unwary." The word "use" in the new rule is ambiguous (does it apply only to trial use?), and information may have a dual use (as a defense and for impeachment).

The new mandatory disclosures must normally be served within 14 days after the Rule 26(f) attorney conference, and within 133 days after the complaint is filed, unless otherwise provided by the court. The disclosure is designed to occur shortly before the Rule 16(b) conference with the court.

The new mandatory disclosure rules also are now universal. District courts cannot choose to "opt out" of Rule 26(a) as they have in the past with different local rules.

The scope of discovery under new Rule 26(b)(1) has been limited. Requests for discovery by counsel are confined to information "relevant to the claim or defense of any party," unless otherwise ordered by the court for good cause shown. (Under the old rule, requests were presumptively permitted if they sought information relevant to the subject matter of the action.) The panel noted that this change will inject more "adult supervision" into the discovery process (through judicial involvement), and may cause counsel to draft their pleadings more broadly or elaborately to ensure that broad discovery is permitted. Motions to strike portions of the pleadings may become more common to restrict broad discovery.

Deposition discovery under Rule 30 has been revised in two ways. First, the general prohibition against "instructions not to answer" has been clarified. Second, each deposition is limited to one day for seven hours of testimony unless agreed by the parties or authorized by the court. The panel noted that this time limitation may not apply to expert witnesses, and may require non-party witnesses to be subject to the agreement of the parties.

Evidence Rule Amendments

The more important amendments to the Federal Rules of Evidence are:

- Rule 103 has been revised to clarify the type of record necessary to appeal a definitive ruling on a motion in limine;
- Rule 701 clarifies and makes more enforceable the distinction between the opinions of a lay person and an expert;
- Rule 702 codifies the three Daubert and Kumho Tires prerequisites for the admissibility of expert testimony, and imposes both qualitative and quantitative tests for the court to apply;
- Rule 703 now prevents the disclosure of hearsay and other inadmissible evidence to the jury during the examination of an expert; and
- Rules 803 and 902 have been amended to permit a simple certification procedure for "self-authentication" of business records in all civil cases.

The new amendments to the civil procedure and evidence rules will be subject to interpretation over time. But the seminar on December 12 provided a solid introduction to those amendments.

New Appointments

Cecelia Morris Is Bankruptcy Judge

By Stacey Creem and Matthew Gray

Cecelia Morris has been sworn in as a judge in the U.S. Bankruptcy Court for

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the Southern District of New York. Prior to her appointment, Judge Morris served as the Clerk of Court for the Bankruptcy Court for the Southern District of New York since 1988. From 1986 to 1988, Judge Morris served as the Clerk of Court for the U.S. Bankruptcy Court for the Middle District of Georgia. From 1981 to 1986, Judge Morris worked in private practice as a domestic relations attorney where she developed a specialty in the area of Uniform Child Custody jurisdiction. Before going into private practice, Judge Morris worked as an Assistant District Attorney for the District Attorney's Office of Griffin, Georgia, from 1977 to 1981.



Bankruptcy Judge Morris

Judge Morris has received numerous honors and awards throughout her career. Judge Morris received a Certificate of Recognition for Outstanding Leadership from the Director of the Administrative Office of the United States Courts in 1994. In 1997, Judge Morris received an Appreciation Award for Service as a Volunteer Mediator from the United States District Court for the Southern District of New York. The following year, Judge Morris was named a fellow of the American College of Bankruptcy.

In addition to her career as a clerk and litigator, Judge Morris is a frequent writer and lecturer. Her publications include "Mediation in Bankruptcy: How it Works in The Southern District of New York" and "Internet Filings Come to New York." Furthermore, Judge Morris has lectured on electronic filing issues at The Court of International Trade Judicial Conference, The New York County Lawyers' Association, and The New York Women's Bar Association.

Judge Morris has been at the forefront of the movement to implement electronic filing. She has authored numerous articles on the subject, and the U.S. Bankruptcy Court for the Southern District of New York is known for being on the cutting edge of electronic filing. Moreover, Judge Morris was awarded the 1999 Director's Award for Excellence in Court Operations by the Administrative Office of the U.S. Courts for her success in implementing a pilot project on electronic filing. This system, says Judge Morris, "allows original court documents to be filed in electronic format by way of the Internet." Judge Morris explains, "Much like the evolution of the ATM networks in banks, this paradigm shift, for the court and attorneys alike, will mature with familiarity and usage."

Judge Morris received her B.S. degree from West Texas State University in 1968 and her J.D. degree from the John Marshall Law School in 1977.

New Appointments

Robert E. Gerber Joins Bankruptcy Bench

By Stacey Creem and Matthew Gray

Robert E. Gerber was sworn in as a United States Bankruptcy Judge for the Southern District of New York on September 5, 2000. Prior to hi appointment to the bench, Judge Gerber was a partner of Fried, Frank, Harris, Shriver & Jacobson, in New York City, where he concentrated in commercial litigation and, thereafter, bankruptcy litigation and counseling. With only a brief interruption in 1971 and 1972, during which he served in the United States Air Force, Judge Gerber was with Fried Frank for 30 years, 22 of them as a partner.

Judge Gerber gained extensive bankruptcy litigation experience early in his career, from 1972 to 1975, as counsel for the debtor in the chapter 11 case of U.S. Financial. From 1975 to 1989, Judge Gerber litigated securities and commercial cases, principally in New York, Oklahoma, and Texas, developing experience in "interim agreement" cases involving commitment letters and contracts that contemplate the execution of more extensive and definitiv agreements down the road. In 1989, Judge Gerber turned back to bankruptcy, initially to train bankruptcy lawyers in litigation skills, and later to immerse



Bankruptcy Judge Gerber

himself in bankruptcy litigation and counseling. For the last eleven years, Judge Gerber practiced nearly entirely in the bankruptcy area, representing both debtors and creditors in large and medium sized chapter 11 cases.

Judge Gerber was admitted to practice in the State of New York in 1971. Judge Gerber is also admitted to practice in the Southern, Eastern, Northern, and Western Districts of New York; the Second, Third, Fifth, Sixth, Ninth, Tenth, and Eleventh Circuits; and the United States Supreme Court. He has been a speaker or panel member in more than a dozen Continuing Legal Education programs, principally with respect to bankruptcy litigation skills, brief writing, and substantive bankruptcy issues. Judge Gerber is a member of the Association of the Bar of the City of New York, the American Bar Association, the Federal Bar Council, and the American Bankruptcy Institute.

Judge Gerber received his bachelor's degree from Rutgers University, with high honors, in 1967 and his law degree, magna cum laude, from Columbia University, in 1970.

The Back Page

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President Monroe started almost as soon as he was sworn in for his second term, with seventeen candidates poised to seek the presidency; that number was soon whittled down to five: William H. Crawford (Secretary of the Treasury, from Georgia); John C. Calhoun (Secretary of War, from South Carolina); John Quincy Adams (Secretary of State, from Massachusetts); Henry Clay (Speaker of the House, from Kentucky); and Andrew Jackson (Senator, from Tennessee). Crawford was the decided front-runner, having numerous advantages — he had stepped aside in 1816 to allow Monroe to succeed Madison in exchange for the "promise" of the future nomination of the congressional caucus (also known as the "King Caucus" — the then established nominating process), he had the support of a number of key newspapers, he had a distinguished resume of service, and he had backing not only in the South but was also supported by Martin Van Buren, the political genius (the "Little Magician") who headed up New York's Albany Regency (and, in the judgment of most historians, was the political godfather of the Democratic Party). One significant impediment to Crawford's chances, however, was the fact that he suffered a serious stroke in September 1823 which left him partially paralyzed, nearly blind, and with great difficulty speaking (Crawford's condition was kept a secret for some time; even when it became known among the political cognoscente, his supporters pressed on).

Because Crawford's opponents recognized that he would be the beneficiary of the congressional caucus process, they publicly attacked King Caucus and instead began to promote nominating conventions in various states. The Tennessee legislature, for example, nominated Jackson as a favorite son candidate in 1822; the (mistaken) expectation among Clay's supporters was that the state's presidential electors would ultimately line up for the then more highly favored Clay. Clay was more successful in generating direct endorsements by the legislatures of Missouri, Ohio, Louisiana, and Kentucky.

Van Buren and other Crawford supporters pressed ahead with the caucus

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process, issuing a published call in February 1824 for a meeting of all congressional representatives to propose candidates for the presidency and vice presidency. At the same time, however, a notice signed by 24 senators and representatives declared that, out of the 261 members entitled to attend the caucus, 181 "deem it inexpedient, under existing circumstances, to meet in a caucus." Ultimately, 66 members met; they nominated Crawford for president and Albert Gallatin for vice president (Gallatin, a resident of Pennsylvania, was added for regional balance; but as a native of Switzerland he was Constitutionally ineligible and ultimately withdrew his name in October).

King Caucus's imprimatur actually hurt Crawford's chances. (The *Baltimore Morning Chronicle*'s editorial reaction was fairly typical: "The poor little political bird of ominous note and plumage, denominated as CAUCUS, was hatched at Washington on Saturday last. It is now running around like a pullet, in a forlorn and sickly state. Reader, have you ever seen a chicken directly after it was hatched, creeping about with a bit of egg shell sticking to its back? This is a just representation of this poor forlorn Congressional caucus. The sickly thing is to be fed, cherished, pampered for a week, when it is fondly hoped it will be enabled to cry the name of Crawford, Crawford, Crawford.") The nomination further energized the other candidates to forge ahead with various state conventions. Adams was promptly endorsed by an assembly in Boston's Faneuil Hall, and the other New England states quickly followed suit. Jackson's endorsement by the Pennsylvania legislature in March 1824 ended Calhoun's chances (but their endorsement of him for the vice presidency led to his declaration for that position — to which he ultimately was elected).

"Traitors And Pirates"

Newspapers weighed in both for and against the candidates. The more negative side of it included such charges as Clay being a drunken gambler, and Jackson being a murderer. The comprehensive nature of these attacks led one politician to observe that, if one were to believe the press: "[All] our Presidents, Secretaries, Senators, and Representatives, are . . . traitors and pirates, and the government of this people had been committed to the hands of public robbers."

As 1824's political calendar drew on, it became clear that no candidate would receive a majority in the Electoral College, and that the election would be decided by the House of Representatives (where only the top three candidates would be eligible to be voted upon, with each state's delegation having one vote). Clay, with broad support as Speaker, was confident that "[i]f I get into the House I consider my election secure." (At the same time, he predicted that if he was not one of the top three in electoral votes, only Adams stood a chance of prevailing.) The prospect of there being no clear-cut winner prompted the candidates to start horse trading even before the first ballot was cast. Crawford's supporters approached first Adams, and then Clay, to be the Georgian's running mate. Adams tried to lure Jackson onto his ticket as vice president, with the slogan: "John Quincy Adams, who can write, and Andrew Jackson, who can fight." Clay attempted to swing New York into his column, first by having New York Chancellor, Nathan Sanford, nominated for vice president, and second, by cutting a deal to have the bulk of New York's electoral votes awarded to Adams, with enough going to Clay to ensure that he would "get into the House." While this succeeded in out maneuvering the Van Buren forces ("Van B. looks like a wilted cabbage"), the Little Magician had the last laugh — the deal was sabotaged when New York's electors met and voted in December. As a result of that intrigue (and the failure of Clay backers to appear when the Louisiana legislature voted its electors), Crawford ended up with four more electoral votes than did Clay.

The Electoral College's pecking order ended as follows: Jackson with 99 electoral votes, Adams with 84, and Crawford with 41. In 18 (out of 24) states, electors were selected (in whole or in part) by popular election (in prior elections, while some states had allowed voting in the presidential election, there is no record of those votes; other states had selected electors exclusively by the legislature — in 1824, New York was one of the six states that still left the decision making in the hands of the legislature); the voting period lasted three plus weeks, with various candidates being listed for president in differing states (only four states had all four candidates on the ballot). By that process, Jackson also had received a plurality of the votes (151,271), with Adams second (113,122), and Clay third (47,531).

With the election moving to the House, Jackson and Adams' forces immediately began to focus on Clay and his supporters. Still bristling from being double-crossed by his "friends" in New York, Clay's natural sympathies were more in tune with Adams (his "American System" was philosophically similar to Adams' political views, and he detested Jackson). Notwithstanding, Jackson's adherents lobbied Clay incessantly; James Buchanan of Pennsylvania (a

Jackson supporter and future president) tried to convince Jackson to offer Clay the position of Secretary of State, but Jackson refused to even consider it. Adams, however, was not above bargaining — even with a politician he did not particularly trust or like (Clay) — making it clear that Clay's support would be well rewarded with a "prominent share" in an Adams administration (code words for the Secretary of State).

In the midst of this high pressured lobbying came word that the Kentucky legislature had passed resolutions directing its congressional delegation to cast its vote for the "western candidate" (i.e., Jackson, since Clay was ineligible). Clay, nonetheless, took the position that the Kentucky delegation was "perfectly free to vote, as its own judgment shall dictate." As such, he prevailed upon his colleagues to cast Kentucky's vote for Adams.

13 States

To become president the votes of 13 states were needed. And by the time the House met on February 9, Adams had in hand 12 (Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, Maryland, Louisiana, Kentucky, Missouri, Ohio, and Illinois), Jackson had seven (New Jersey, Pennsylvania, South Carolina, Alabama, Mississippi, Tennessee, and Indiana), and Crawford had four (Delaware, Virginia, North Carolina, and Georgia). A number of those states had been decided by the vote of a single representative, however, and might shift if there were to be more than one ballot. The only way to get beyond a first ballot, however, was to navigate through the tricky shoals of New York politics.

New York's congressional delegation was evenly divided: Adams had 17 representatives pledged, Crawford 15, and Jackson two. Upstate Congressman Stephen Van Rensselaer (the "Patroon") was listed as a Crawford man. But when he arrived at the Capitol on February 9, Clay and Daniel Webster were waiting for the Patroon and whisked him into the Speaker's office. Not content to lobbying him on political grounds, the two legislative giants also suggested in blunt terms what the likely consequences of an Adams defeat would be to Van Rensselaer's "large estate" in New York. "Stagger[ing]" from the Speaker's office "in tears literally," the Patroon made his way to the well of the House. Van Buren, who hoped to engineer a deadlock on the first ballot and negotiate for Crawford on later ballots, nonetheless remained certain of Van Rensselaer's vote for Crawford because the Patroon, a deeply religious man, had given his word and would not violate that oath. In his autobiography, Van Buren wrote of what happened next: "[Van Rensselaer] took his seat fully resolved to vote for Mr. Crawford, but before the box reached him, he dropped his head upon the edge of his desk and made a brief appeal to his Maker for guidance in the matter — a practice he frequently observed on great emergencies — and when he removed his hand from his eyes he saw on the floor directly below him a ticket bearing the name of John Quincy Adams. This occurrence, at a moment of great excitement and anxiety, he was led to regard as an answer to his appeal, and taking up the ticket he put it in the box." And thus John Quincy Adams became the sixth president of the United States.

Postscript

Three days after the House's action, Adams offered Clay the position of Secretary of State; after consulting with his political allies, Clay accepted and was easily confirmed by the Senate. This enraged Jackson and his followers. Jackson wrote: "So you see the Judas of the West has closed the contract and will receive the thirty pieces of silver. His end will be the same. Was there ever witnessed such a barefaced corruption?" The "Corrupt Bargain" continued on as a weapon leveled against Clay for the remainder (27 years) of his distinguished political career.

Virginia Senator John Randolph had long been one of Henry Clay's more pointed political adversaries. (Early on in their congressional careers Randolph and Clay had bumped into one another on a street in Washington, and neither would yield to the other. Randolph spoke first: "I never sidestep skunks." Clay replied, "I always do," and he quickly stepped aside.) Randolph's vituperative attack against the "Corrupt Bargain" on the floor of the Senate led to a duel between the two men in 1826. Because dueling was against Virginia law (and given the code of chivalry), Randolph declined to aim at Clay; Clay's bullet pierced Randolph's coat. Honor served, the two men then shook hands. Randolph said: "You owe me a coat, Mr. Clay." To which Clay replied: "I am glad the debt is no greater." Two days later the duelists exchanged cards and resumed social relations.

A recently published study by Professor Catherine Allgor ("Parlor Politics: In Which the Ladies of Washington Help Build a City and a Government," University Press of Virginia 2000) argues that Louisa Catherine Adams' skillful use of the intricacies of Washington's social structure was instrumental in lining up critical congressional support in the 1824 election for her not very personable husband, John Quincy.

The Election Of 1824

By C. Evan Stewart

While the just completed presidential election was a fascinating and divisive experience, it was not (contrary to many in the media) unique in our history. The election of 1876 was very similar, and the election of 1888 also offers strong parallels. But to my mind, the most interesting of our presidential elections in which there was Electoral College confusion was that of 1824.

Seventeen Candidates

The 1824 election saw the emerging outlines of our modern political system, with (among other things) political factions organizing to reach across geographic boundaries, political conventions, the influence of mass media, as well as popular voting for presidential candidates being recorded for the first time. The race to succeed

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John Quincy Adams

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