

by John G. McCarthy

# The Federal Judiciary Turns 225 in Style

### On Nov. 4, the first Tuesday in November, the bench

and bar of the U.S. District Court for the Southern District of New York marked the occasion of the 225th anniversary of the first session of any court established under the Constitution. Chief Judge Loretta A. Preska, a Federal Litigation Section board member, presided at a special session of the court in the ceremonial courtroom of the Daniel Patrick Moynihan U.S. Courthouse in lower Manhattan. She was joined on the bench by all of the judges of the so-called “Mother Court.” Chief Judge Robert A. Katzmann led a contingent of judges from the Second Circuit. Chief Judge Carol Bagley Amon of the Eastern District of New York traveled across the East River for the occasion. Scores of leaders of the local bar attended the session, including the District’s U.S. Attorney Preet Bharara, former U.S. Attorney General Michael B. Mukasey, and former U.S. Attorney and New York County District Attorney Robert M. Morgenthau. They were joined by Federal Bar Association (FBA) National President Matt Moreland, national board members Simeon Baum and Raymond Dowd, Second Circuit Vice President Ernie Bartol, chapter presidents Olivera Medenica (SDNY) and Russell Penzer (EDNY), and other local FBA leaders. The special session marked the first of a series of events planned to take place this year to honor 225 years of the court’s existence. District Judges P. Kevin Castel and Deborah A. Batts are co-chairs of the yearlong celebration and did a remarkable job to get it started in style.

The special session was called to order by Clerk of the Court Ruby J. Krajick and began with the presentation of the colors by New York Ancients Fife and Drum Corp., dressed in Colonial-era clothing. Preska then addressed the gathering and informed everyone how the first judge of the court, James Duane, presided over the first session of the U.S. District Court for the District of New York on the first Tuesday in November, Nov. 3, 1789. Duane was a former mayor of the city of New York. Krajick read a news account of that first session, which took place at the Old Royal Exchange in lower Manhattan and was immediately adjourned because there was no business before the court. The minutes from that first session, which were on display in the foyer outside the ceremonial courtroom, indicated that 30 men were admitted that day as the first members of the bar of the court. Their ranks included the district’s first U.S. attorney and also its first clerk, the mayor of the city of New York, future vice president (and

Alexander Hamilton’s duelist) Aaron Burr, a future associate justice of the U.S. Supreme Court, two future New York State attorneys general, and several men who later became federal judges.

The commission that George Washington sent to James Duane of New York and Washington’s transmittal letter were also on display. Batts told the group how the wording of the commission of federal judges has remained unchanged since September 1789. Washington’s transmittal letter is evidence of his foresight in understanding the important role the federal judiciary would have in our country’s history. The letter explained that the judicial branch of the new government would be “the Pillar on which our political fabric must rest” and that, therefore, Washington had “endeavored to bring into the high offices of [the branch’s] administration such characters as will give stability and dignity to our national Government.”

A historic artifact of the court played an important role in the special session, the SDNY’s Silver Oar signifying its admiralty jurisdiction in a tradition from the British Empire that dates to 1660. The Silver Oar, which was struck in 1725 and has been with the Museum of the City of New York for safekeeping, was returned to the court for the occasion. Preska directed Acting U.S. Marshal Eric Timberman, who donned white gloves, to place the Silver Oar and its cradle before Senior District Judge Charles Haight. Haight, a former admiralty lawyer, explained how, in earlier times, the Silver Oar would be placed on the bench before the judge whenever the court was sitting in its admiralty jurisdiction. He invited those in attendance to imagine how different things would look to someone on a ship sailing out of New York Harbor in 1789 versus 2014, but how, once sufficiently far away from shore, the surrounding ocean looks the same today as it did back then. He recalled the significant role that admiralty played in the court’s history and vice versa, especially during the court’s first 100 years. Another historic item relating to admiralty was on display in the foyer: the original Order for Ad Interim Stipulation relating to the sinking of the *Titanic* entered in its owner’s petition to limit liability. Based on the evidence presented to him, Judge Charles Hough determined that the value of what remained at the termination of the voyage was \$96,000, which included the value of its 13 lifeboats and one collapsible boat. When Haight finished his remarks, he passed the Silver Oar to his colleagues for a closer look.

Preska invited prominent trial lawyer and former U.S. Attorney

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for the Southern District of New York Robert B. Fiske Jr. to make remarks on behalf of the court's bar. Fiske had the same honor in 1989 when the court celebrated its bicentennial. Among his remarks, Fiske expressed pride in how diversified the court's bench has become in those 25 years. (Sitting there as the son of parents who became U.S. citizens before the Mother Court, I could not help but reflect on how welcoming that fact must be to the men, women, and children from all over the world who today take their citizenship oath before the remarkable men and women who constitute its bench.)

Castel and Batts addressed the gathering to thank the various institutions and individuals who helped make the celebration possible. Castel reminded those in attendance of the many famous cases handled in the court, including those involving the sinking of the *Luistania*, the *General Slocum*, the trial of Alger Hiss, and two cases involving former U.S. attorneys general: John Mitchell in the Watergate scandal and Harry Daugherty in the famous Teapot Dome scandal. Castel also explained that the judges rely on the court's strong bar and informed them that biographies of all 154 men and women who have served on the court's bench would be available online as part of the celebration. Batts discussed the series of upcoming events planned in honor of the 225th anniversary, including reenactments of the Pentagon Papers case, the *American Pin v. National Button* patent trial, and the trial of John Peter Zenger. Additionally, discussions of the lives of three of the Mother Court's famous jurists—Learned Hand, Edward Weinfeld, and Constance Baker Motley—will take place.

As the attendees exited the Ceremonial Court for a reception in the court's jury assembly room, they had an opportunity to view portraits of Duane and the court's fourth judge, John Sloss Hobart. Also on display were original documents from two of the court's hundreds of famous cases. The original Judgment and Sentence signed by Judge Irving Kaufman in 1951 ordering the U.S. marshal for the district to execute Julius Rosenberg for conspiracy to commit espionage appeared in a case next to the original opinion of Judge John Woolsey from 1933 in the famous in rem case of *United States v. One Book Called Ulysses*. The *Ulysses* case resolved the issue of whether the novel of Irish author James Joyce was obscene and

could be banned from importation into the United States. Woolsey, in an eloquent decision, ruled that the novel, viewed as a whole, was not obscene. Woolsey's opinion, together with that of Circuit Judge Augustus Hand affirming it, established standards for assessing the difference between obscenity and artistic expression that influenced the Supreme Court's later precedent on the subject.

Finally, the day also marked the opening of an exhibition of the works of courtroom sketch artists from famous cases in the Southern District. The exhibition in the lobby of the Thurgood Marshall U.S. Courthouse, the Cass Gilbert building across Pearl Street, will be open to the public through May 4. The court cases depicted include famous civil ones involving Jacqueline Kennedy Onassis, Gen. William Westmoreland and CBS, Ariel Sharon and *Time*, and the U.S. Football League and National Football League. About a dozen criminal cases are shown involving defendants from former U.S. Attorney General John Marshall to Martha Stewart, from Leona Helmsley and Imelda Marcos to Michael Milken, from Ivan Boesky and Bernie Madoff to Osama bin Laden (before the 2001 World Trade Center attack) and the Somali pirate. Moreland and a cadre of FBA leaders were escorted by Preska to preview the art exhibition before the special session. The group had the unique opportunity to observe several of the court's judges reminisce about cases in which they had participated. Judge Kevin Thomas Duffy recalled presiding over the criminal trial of accused mafia boss Big Paulie Castellano. Castellano was gunned down outside Sparks Steakhouse during the trial in a hit allegedly ordered by John Gotti. Judge Lewis A. Kaplan fondly recalled the case involving Mrs. Onassis as the first trial in which he was a participant.

The U.S. courts have produced a four-minute video reporting on the events of the Nov. 4, 2014, special session, which is available for viewing on the SDNY Chapter's page on the FBA's website. Additional information about the events scheduled through the fall are available on the Mother Court's website. The website also contains a special section dedicated to the federal judiciary's 225th anniversary. As a proud member of the Bar of the Mother Court, I invite you to join the celebration. ☺