



A BRIEF HISTORY OF THE U.S. COURT OF INTERNATIONAL TRADE

By Joseph F. Donohue Jr.

Although Nov. 1, 1980, marked the creation of the U.S. Court of International Trade, the need for such a court was created nearly 200 years earlier, just after the first Congress of the United States enacted the first tariff act imposing duties on imported goods (Tariff Act of July 4, 1789). Even in those early years, importers did not always agree with the duties that local customs officials assessed. However, there was no statute authorizing suits against customs to recover excess duties. Accordingly, disgruntled importers sought judicial review by bringing a common law action in *assumpsit* against the local customs officer, in his personal capacity, for monies improperly received. To protect themselves, customs officers sometimes withheld payment of the duties into the U.S. Treasury, fearful that if a judgment were rendered against them, their personal assets would be in jeopardy.¹ As you might imagine, this practice had its problems; therefore, in 1857 Congress passed legislation allowing importers to sue the collector of customs, in his official capacity, in the U.S. district court in the district where the goods in question had entered the country.² Judicial review at that time was limited primarily to issues of classification, rate, and amount of duty. Customs decisions as to the dutiable value of imported merchandise were not reviewable by the courts.

By 1887, district court dockets were overcrowded and decisions lacked consistency, prompting the secretary of the treasury to describe the state of affairs as follows: "The calendar of customs suits in the southern district of New York has grown so large that there is no reasonable prospect of disposing of them in this generation. A merchant who has suffered an illegal exaction of duties can-

not hope for a speedy trial of his cause, and justice is procedurally denied him."³

To rectify this problem, Congress passed the Customs Administrative Act of June 10, 1890, which created the U.S. Board of General Appraisers for the purpose of hearing all cases related to customs.⁴ This was the first step Congress took to create a tribunal that was national in scope, was specialized as to subject matter jurisdiction, and was the precursor to what would become the U.S. Court of International Trade some 90 years later.

The board was a quasi-judicial body consisting of nine members, who were appointed by the President and confirmed by the Senate; the member of the board could be removed from office for "inefficiency, neglect of duty or malfeasance in office."⁵ The jurisdiction of the board was of two types: (1) In classification cases and in other cases concerning the rate and amount of duties, the board was regarded as judicial in character. Appeals from such decisions could be taken to the district court and then to the Supreme Court. (2) In appraisement cases, the board's review function was regarded as quasi-judicial; the board observed less formal rules of evidence, and its decisions were final and not reviewable in court.

Over time, the board's judicial character grew. The Tariff Act of 1909 gave the board all the powers of a district court in preserving order, in compelling the attendance of witnesses and the production of evidence, and in punishing individuals for contempt. The 1909 act also created the Court of Customs Appeals to hear appeals of all final decisions made by the Board of General Appraisers as to classification and rate of duty as well appraised value.⁶ In 1926, Congress changed the name of the Board

of General Appraisers to the U.S. Customs Court,⁷ recognizing that the board was functioning as a court and was entitled to the dignity appropriate to a federal court. In 1956, Congress specifically declared the Customs Court to be an Article III court,⁸ thereby confirming that judges of the court had the same rights to tenure and undiminished salary that were guaranteed to judges who served on district and appellate courts; this action presumably added to the overall contentment of the judges who sat on the Customs Court. The Customs Courts Act of 1970 enacted major changes in the court's procedures, and these modifications brought the court more in line with the procedures of the district courts.⁹ Even though the congressional enactments done in 1926, 1956, and 1970 were significant building blocks in the history of the Customs Court, they made no changes with respect to the court's jurisdiction or powers—a change that would have to await the Customs Courts Act of 1980.

A case of historic significance to the entire bar and importing community in the 1970s was *Yoshida Int'l Inc. v. United States*, 73 Cust. Ct.1, 378 F. Supp. 1155 (1974), 526 F.2d 560 (C.C.P.A. 1975). In summer 1971, the United States was experiencing a growing negative balance of payments position, which led President Richard M. Nixon to declare that the international position of the United States was threatened to the point where U.S. national security could be impaired. To alleviate the problem, on Sunday evening, August 15, 1971, Nixon issued a proclamation imposing a surcharge, or supplemental duty, of 10 percent on all dutiable articles entered for consumption after 12:01 a.m., Aug. 16, 1971.¹⁰

Members of the bar and the importing community learned of the surcharge on the Sunday night's news broadcasts, just a few hours before the surcharge was to take effect. Upon arrival at the office on Monday morning, virtually every member of the bar was met by telephone calls from frantic clients asking whether the surcharge was for real, and if so, what could be done about it. If this had occurred on Aug. 16, 1981, rather than 1971, we could have advised our clients that, as a result of the Customs Court's expanded jurisdiction and remedial powers conferred by the Customs Courts Act of 1980,¹¹ we could immediately file an action in the Court of International Trade seeking to have the surcharge declared invalid and the customs office enjoined from collecting the supplemental payment. But the surcharge was imposed in 1971, and the Customs Court had no injunctive powers and no jurisdictional mechanism for promptly reviewing the merits of the case. As a result, in 1971 we had to advise our clients as follows: "As to those goods that are arriving at the Ports of New York, Houston, Los Angeles, and elsewhere as we speak, you will have to pay the additional 10 percent duty. In due course, customs officers will liquidate the entry and we can protest the liquidation; in due course, customs officers will deny the protest and we can file suit in the Customs Court; and, in due course, the court will rule on the legality of the surcharge."

And this is essentially the step that importers took, and *Yoshida* became the test case; overnight there arose a cot-

tage industry of what was known as "surcharge protest filers." Three years later, a three-judge court consisting of Chief Judge Boe, Judge Maletz, and Judge Re ruled that the surcharge was invalid, because it exceeded the authority delegated to the President by Congress. The Court of Customs and Patent Appeals reversed this decision, holding that the surcharge was a valid exercise of the President's power under the Trading with the Enemy Act. The surcharge generated several other actions in the Customs Court as well as in U.S. district courts; all of them ultimately came to rest in 1983, when the U.S. Supreme Court denied certiorari in *Alcan Sales v. United States*, a ruling that also upheld the validity of the surcharge.¹²

In an article discussing the court some years ago, Chief Judge Re wrote that international trade is the "single common language among all nations."¹³ If that is the case, let us hope that any disputes that are brought to the Court of International Trade and litigated in the future will be resolved in a world that is marked by greater international peace and humanity. **TFL**

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Endnotes

¹Ruth M. Sturm, CUSTOMS LAW AND ADMINISTRATION, 169 (1980).

²Joseph E. Lombardi, *The United States Customs Court—A History of Its Origin and Evolution*, 15 (1976).

³*Id.* at 16 (quoting from U.S. TREASURY ANNUAL REPORT at xxxiii (1887)).

⁴Act of June 10, 1890, ch. 407, sec. 12, 26 Stat. 131 (1890).

⁵Lombardi, at 26–30.

⁶Act of Aug. 5, 1909, ch. 6, § 29, 36 Stat. 11, 105 (1909).

⁷Act of May 28, 1926, ch. 411, § 1, 44 Stat. 669 (1926).

⁸Act of July 14, 1956, ch. 589, 70 Stat. 532 (1956).

⁹Customs Courts Act of 1970, Pub. L. No. 91-271, 84 Stat. 274 (1970).

¹⁰Proclamation No. 4074, 36 Fed. Reg. 15724 (1971).

¹¹Customs Courts Act of 1980, Pub. L. No. 96-417, 94 Stat. 1727 (1980).

¹²*Alcan Sales, Div. of Alcan Aluminum Corp. v. United States*, 429 U.S. 986 (1976).

¹³Hon. Edward D. Re, *Litigation Before the U.S. Court of International Trade*, 19 U.S.C.A. at xxv.

PRESENTATION OF DISTINGUISHED ACHIEVEMENT AWARD TO CHIEF JUDGE JANE A. RESTANI

By M. Barry Levy

In honoring the first woman chief judge of the U.S. Court of International Trade, the author takes a look at how woman lawyers have fared in private practice, as federal judges, and as chief judges.

This special session of the court has been convened at our request to present Chief Judge Restani, with the Empire State Chapter Distinguished Achievement Award, as the first woman chief judge of the U.S. Court of International Trade. Thereafter, a motion will be made to admit 26 applicants to practice before this honorable court.

The last time I had the privilege of participating in a proceeding in this magnificent courtroom was on Dec. 19, 1980, which was the very first session of this court, at which time I represented the Association of the Customs Bar as its president. In the following year, the association changed its name to the Customs and International Trade Bar Association to better reflect the realities of the practice.

As evidence of the national importance of this court, some of the other individuals who spoke during the court's inaugural session in 1980 included Benjamin Civiletti, the U.S. attorney general; Judge Wilfred Feinberg, chief judge of the U.S. Court of Appeals for the Second Circuit; Congressman Peter Rodino, chairman of the House Judiciary Committee, who was quite instrumental in securing the funding for this courthouse; and the new senator-elect from the state of New York, Alphonse D'Amato.

The Customs Court Act of 1980, which increased the court's jurisdiction and changed the name of the U.S. Customs Court to the U.S. Court of International Trade, was in part the result of record-breaking growth of imports into the United States. These developments resulted in the need for a stronger forum to resolve customs and international trade disputes.

Just a few statistics, for certain landmark years, which are part of the court's history, will illustrate the dramatic growth in our nation's import volume.

- In 1930, the year the famous Smoot-Hawley Tariff Act was enacted, imports into the United States totaled \$3.1 billion.
- Twenty-six years later, in 1956, the year the members of the U.S. Customs Court became Article III judges, imports had quadrupled, having risen from \$3.1 billion to \$12.7 billion.
- In 1980, 24 years later, the year in which this court was established, imports into the United States rose to over \$249 billion.
- And last year, incidentally, our volume of imported merchandise reached a record \$1.6 trillion.

During this court's inaugural session, Chief Judge Edward D. Re, referring to the Customs Court Act of 1980, made the following forecast:

I believe that in years to come that law will be perceived [also] as something akin to a constitution in the affairs of international trade. For the act not only creates the judicial machinery to resolve international trade disputes, it also, as does a constitution, pronounces certain fundamental principles that determine the powers and duties of government agencies, and guarantees certain rights to the people who must deal with those agencies. It is clear that Congress, in the Customs Courts Act of 1980, has ordained certain fundamental principles—

One, decisions of those agencies and officers of government, involved in international trade are subject to the same policy of judicial review as Congress has provided for decisions of other government agencies and officers. Two, persons who believe they are injured by those decisions have effective access to appropriate judicial remedies. Finally, the third major achievement of the act—one which complements and implements the first two—has to do with the institution of this court, which is now fully equipped with all the powers in law and equity necessary to provide due process and equal protection of law.

These then, are some of the principles guiding the court's decisions in resolving customs and international trade disputes, which history has demonstrated, can, and have, affected entire industries, national economies, and our global relationships, including the judicial determination as to whether or not an imported SUV is to be treated as a truck or an automobile for tariff purposes.

I'd like to mention at this point that the Federal Bar Association has enjoyed a close working relationship with this court and the entire federal judiciary. The FBA has consistently rendered support for the federal judiciary's most pressing issues. Equitable compensation and benefits are but one of those issues. A significant number of our federal judges have had the opportunity to leave the bench for lucrative salaries in the private sector but have, instead, chosen—unselfishly—to make a financial sacrifice in the interest of serving the administration of justice. A number of other judges, perhaps with one or two children in college, have been forced to leave the bench for the private sector for economic reasons.

The Federal Bar Association also supports the judiciary in its effort to revive the nonpartisan quadrennial commission as the systemic solution that can provide equitable and realistic pay relief not only for our federal judges but also for members of Congress and all senior executives in government. It is a given that compensation levels in the public sector cannot compete with those in the private and corporate sector, but certainly increased compensation, at least at the executive levels, in all three branches will attract and help keep our more qualified individuals in government service. Achieving this goal is one of the FBA's primary legislative objectives.

Our honoree graduated with distinction from the University of California at Berkeley, where she earned her

B.A. degree, and was a member of the *Law Review* at the University of California at Davis, where she was awarded her J.D. degree. While there, she was elected to Phi Kappa Phi, the nation's oldest and most selective honor society for all academic disciplines. She was also elected to the order of COIF, a national honor society recognizing law school seniors in the top 10 percent of their class.

Judge Restani's practice years were all with the Civil Division of the Department of Justice. Her legal career began in 1973 as a trial attorney in the attorney general's honor program, which is the only way that the Department of Justice hires entry-level attorneys. Selection is based on many criteria, but particularly on academic excellence and law review.

In 1976, Judge Restani became the assistant chief of the Commercial Litigation Section, where she served until 1980, when she was promoted to the office of director of the Commercial Litigation Branch. In 1983, she received the John Marshall Award, the Department of Justice's highest award for excellence in performance.

Judge Restani's employment with the Department of Justice concluded in 1983, when President Ronald Reagan appointed her as a judge of the U.S. Court of International Trade. Judge Restani became the court's chief judge in 2003, at the conclusion of Judge Carman's tenure as chief judge.

In honoring Chief Judge Restani today, we are recognizing a historic achievement, a milestone for women, a milestone as well in the ongoing effort to increase diversity in the federal judicial system. Women attorneys in the United States represent approximately 30 percent of all attorneys admitted to practice. Statistics compiled by the Commission of Women in the Profession clearly demonstrate progress in some aspects of gender equality: to wit, of all J.D. degrees awarded by law schools in 2005, 51 percent were to women.

However, there is still a long way to go in the professional ranks—and an even longer road to hoe in the federal judiciary. In private practice, while women associates account for 43.4 percent of all associates, only 17.1 percent of women are partners. The Federal Judicial Center's records indicate that less than 25 percent of all federal judges are women. What makes Judge Restani's accomplishment even more significant is that she is one of only 21 women chief judges (less than 18 percent) in the entire federal judiciary.

Accordingly, in recognition of her outstanding record of service to our country, and for becoming the first woman

chief judge of the U.S. Court of International Trade, it is both an honor and a privilege to present the Empire State Chapter Distinguished Achievement Award to Chief Judge Jane A. Restani. **TFL**

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AWARD ACCEPTANCE

By Hon. Jane A. Restani

Thank you very much for this wonderful honor, but it has also been my honor to be a judge of the U.S. Court of International Trade (CIT) for more than 22 years. It has also been a great pleasure. The work of the court is fascinating—from unfair trade disputes involving foreign and domestic

industries as well as sovereign countries, to customs classification and penalty matters, and even trade adjustment cases, where we get to encounter human litigants.

The commercial cases are all interesting. Generally, enough financial impact results from this commercial litigation that parties can afford to put the best lawyering into the cases. Thus, we are blessed to have terrific adversaries make their cases before the court. And, of course, the

statutes themselves are intricate. Even after all this time, I have to make sure I know how all parts fit together each time I see a new case.

It is the icing on the cake that we are permitted to sit on other federal courts, and I have taken advantage of that opportunity in both district courts and courts of appeals. It is always a wonderful learning experience and I believe it makes us better judges in the CIT.

Even though the work here is mesmerizing, without my colleagues this would not be a pleasant place to be a judge. We are a relatively small court, and each chamber is a small separate operation, but we all work in the same legal area. Cooperation is essential to avoid stepping on each other's toes—or opinions. I, however, am most fortunate to have



Chief Judge Jane A. Restani receives the Empire State Chapter Distinguished Achievement Award from M. Barry Levy.

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Judicial Profile

PHIL SCHATZ

Hon. Jane A. Restani Chief Judge, U.S. Court of International Trade

THE TEMPERATURE OF the water in San Francisco Bay is a chilly 52 to 64 degrees in the warmest of times; it drops into the 40s in January. Whenever she returns to her hometown of San Francisco to sit by designation on the U.S. Court of Appeals for the Ninth Circuit, Chief Judge Jane Restani of the U.S. Court of International Trade



swims in the chilly waters of the bay. Even though she left California in the 1970s, she has maintained her membership in the South End Rowing Club near Fisherman's Wharf. She has swum the 1.5 miles from Alcatraz Island to the Presidio several times. When she is unable to get to the bay, she makes do with the chilly waters off Long Island Sound. "It tells you a bit about her level of energy," says a judicial colleague.

There can be no dispute that Chief Judge Restani has energy to spare. According to Marc Levinson, a former law school study partner and now a partner at Orrick Herrington & Sutcliffe LLP in Sacramento, her motto could be "Why sit around?" Tamila Jensen, then the managing editor of the *Law Review* and now an appellate specialist in Granada Hills, says that "Jane has bicycled all over Europe, and when she takes a vacation, it's in the mountains." Indeed, Judge Restani has climbed all 35 peaks in the Catskill Mountains over 3,500 feet, traveled the Himalayas, recently hiked the demanding Inca Trail in Peru, and declared her intention to climb Mount Kilimanjaro before she turns 60.

And her outside interests are not limited to athletic pursuits. According to her husband, Ira Bloom, a professor of political science at the City University of New York's Lehman College, Chief Judge Restani has an abiding interest in art and art history—her mother was an art teacher—and is a regular visitor to museums. She speaks fluent Italian and good Spanish and is an energetic and eclectic reader with a special interest in engineering topics. Chief Judge Restani and Professor Bloom (who was named Lehman College's 2006 Teacher of the Year) frequently collaborate on *Law Review* articles on such topics as the continuing vitality of Chief Justice John Marshall's 1804 *Charming Betsy* doctrine, which states that a federal statute should be construed consistent with international law when "fairly possible." Judge Restani also gives an annual lecture on judicial decision-making for Professor Bloom's class on the judiciary.

Judge Restani is still youthful and fit, and it is hard to believe that she has been on the bench for almost a quarter-century, having been appointed by President Ronald Reagan to the U.S. Court of International Trade in 1983, after 10 years in government practice. This makes her the second longest sitting judge on the court, appointed only six months or so after Judge Gregory Carman's appointment. (Judge Leo Gordon probably bests both of them in breadth of institutional knowledge, even though he was appointed in 2006, because he helped write the act that created the court and has worked for the court continuously since 1981.) Judge Restani was elevated to chief judge in 2003. "I can't say I came to the court with any formed philosophy of judging," says the judge. "I had only been an attorney for 10 years when I was appointed. I was very academic, and conservative in the sense that I don't believe in reaching out for issues to decide, but otherwise I was not as attentive to the process as I am now. I have become more aware of the mechanics of dispute resolution, and I think that I have developed better people-sense and listening skills over time."

Although appointed by a Republican president, she is an independent for purposes of the statute that created the court, which requires that it be politically balanced. Some of her friends from law school considered her an unlikely Reagan appointee, not because of the qualifications she had to sit on the

court, but because the law school was part of the frequent and publicized student sit-ins against then Gov. Reagan in the politically active early 1970s. Chief Judge Restani does not recall being involved in the protests, but she won't disagree if others remember that she had been. As the saying goes, too clear a memory of the 1970s is proof that you weren't there.

Judge Restani's judicial philosophy is conservative in the traditional sense: "I believe in deciding cases on the narrowest reasonable ground. It is easier to reach consensus that way." She has no problem deciding hard cases, but she believes that a court should move cautiously and, above all, fully explain its reasoning. In her opinion, some recent examples of good judicial craftsmanship—not from her court—are the various decisions concerning the recent Terry Schiavo case in Florida. "These decisions are great," she says, "they are written with care, and take a hot button political issue and try to explain the basis for decision."

In her time on the bench, she has developed a reputation as a ferociously smart, well-prepared, plain-speaking judge who goes straight to the heart of the matters before her. "Jane can be very intense when she is focusing on legal issues," says Levinson. "Nobody can drill down like her. In law school, Jane always wanted to understand everything and didn't leave any stone unturned until she did." These qualities made her an ideal study partner, he explains, adding that he is confident that Judge Restani doesn't write an opinion until she is satisfied that she has mastered the subject matter before her. Judge Restani "is very direct and very to-the-point," says Judge Tom Aquilino, a fellow judge on the U.S. Court of International Trade. "She is not afraid to let you know how she feels," says Eric Rubel, a former law clerk to the judge.

Chief Judge Restani's intensity and ability to bore in on the central issues in a case can be off-putting to advocates who are not fully prepared. These traits may be the source of an anecdote that is floating around: that she was once accosted in the New York City subway system and beat up her mugger. The story contains more than a kernel of truth. A man tried to take her purse as she was walking across the Brooklyn Bridge on her way to the court. She fought back, and the would-be robber lost his coat. Judge Restani cautions that she is not counseling that people should fight back against muggers, but in such situations "one doesn't think, one just reacts," she says.

For prepared attorneys, however, arguing in front of Judge Restani can be an exhilarating, albeit demanding, experience. For one thing, Judge Restani will have reviewed the briefs. "Judge Restani is always prepared," says fellow Court of International Trade Judge Timothy Stanceu, who appeared before her while in private practice. "She will not only have read your briefs, she will have mastered them." For another, Judge Restani has keen understanding of the

precedents. "Judge Restani has an almost encyclopedic knowledge of the court's prior cases and the operative statutes," says Judge Stanceu. "Judge Restani has a fully formed vision of the court and how the anti-dumping statute works," says Judge Richard Eaton, a fellow Court of International Trade judge. Finally, Judge Restani is scrupulously fair. According to Michael Shor, a partner at Arnold & Porter, who frequently practices before the court, "Judge Restani has a professional reputation for being fair and even-handed." Says Judge Stanceu, "If you're before Judge Restani, you know you'll be heard. She's fair, analytical, and thorough." He adds that "the key at oral argument before her is to consider her questions carefully and do your best in responding to them."

An essential part of Judge Restani's job satisfaction is the high caliber of her fellow judges. The court is collegial, and the judges frequently eat lunch together. "I am most fortunate to have wonderful colleagues," says Judge Restani.

Another important consideration is the intellectual challenge the court offers. "Our cases are hard," says Judge Eaton, quoting Judge Aquilino. The cases are hard, explains Judge Aquilino, because they involve intricate, overlapping statutes and the enormously complex trade markets. "One of the joys of our court," says Chief Judge Restani, is that "you get a great variety of challenging factual backgrounds." Chief Judge Restani relishes the opportunity to learn about the diverse industries in the trade cases before her—even areas that others might find imponderably arcane or dull. "We get cases involving such things as chemistry and aluminum smelting," she says. Her interest in engineering dates back to her career before she assumed the bench. "When I was at the Department of Justice," laughs Chief Judge Restani, "I always got the machinery cases—broken turbines, air compressors, whatever."

Chief Judge Restani has nothing but praise for the bar of the court. The financial consequences of the court's decisions can be substantial, so parties "can afford to put the best lawyering into the cases." The lawyers who appear before her are first-rate advocates, who understand the complicated fact patterns and statutes, she says. According to Judith Wise, a professor at Willamette University College of Law and a former law clerk, this mutual respect allowed Judge Restani to work closely with the bar to fashion the claim and refund procedure when the Supreme Court affirmed the decisions of a three-judge panel of the Court of International Trade and of the Court of Appeals for the Federal Circuit and ruled that the harbor maintenance taxes that had been passed by Congress were unconstitutional. The vast number of claimants—more than 7,000—rendered ordinary court procedures unworkable, says Professor Wise, so Judge Restani held public hearings to determine pro-

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Judicial Profile

YVONNE M. HILST

Hon. Gregory W. Carman Judge, U.S. Court of International Trade

PRESIDENT RONALD REAGAN appointed Judge Gregory W. Carman to the U.S. Court of International Trade in 1983. Although he considers himself a family man first, Judge Carman identifies his appointment to the bench as the highlight of his life. It is not surprising that the walls of Judge Carman's chambers are covered with the



various plaques and commendations he has received throughout the years. Mementos from the judge's many travels are carefully interspersed throughout the rooms, as are photographs of his family. The remaining space contains the judge's collection of all things related to elephants.

Born in Farmingdale (Long Island), N.Y., at the start of World War II, to retired Nassau County District Judge Willis B. Carman Sr.

and Marjorie Sosa Carman, Gregory Carman spent his childhood clamming, fishing, sailing, and gathering destroyed debris from submarines along the coastline. He enjoys the former three activities to this day. The judge was a keen student and still recalls the poem about English grammar that he learned in primary school, and he recites it to the amusement and amazement of his law clerks.

In 1958, the judge received his B.A. from St. Lawrence University in Canton, N.Y. During his junior year in college, he studied in Paris under the Sweet Briar Junior Year in France program. (He prides himself on his continued fluency in French.) In law

school at St. John's University, Judge Carman was a member of the law review and graduated as part of the honors program in 1961. The degree of Doctor of Laws, honoris causa, was conferred upon him by Nova Southeastern University in 1999 and by his alma mater, St. John's University, in 2002, for professional achievement.

From 1958 until 1964, Judge Carman served in the U.S. Army. During his service, he attended the Judge Advocate General Corps' graduate honors program at the University of Virginia School of Law. The judge was discharged with the rank of captain and was awarded the Army Commendation Medal for Meritorious Service. As a newly minted captain in the JAG Corps, Judge Carman was called upon to be a legal officer and adviser to the brigadier general commanding the troops who were on hand when James Meredith took his place as the first African-American student at the University of Mississippi. When the brigadier general suggested that the troops be issued live ammunition, Capt. Carman replied, perhaps impudently, "You can't give them live ammunition. They'll shoot someone." And as it turned out, two people were killed during the riots that ensued upon Meredith's enrollment in Ole Miss, and the deadly riots at Kent State University in Ohio occurred just eight years later.

Judge Carman's tangential involvement in the civil rights era did not end there. As the judge tells it, Robert Kennedy issued a mandate that no military personnel transfers would be allowed on account of race, because "there were no longer race problems in the South." Shortly thereafter, a young African-American soldier sought advice from Capt. Carman, who was then stationed at Fort Benning in Georgia. The soldier wanted to marry a white woman, but the local anti-miscegenation laws precluded their union. Capt. Carman agreed with the soldier that the laws were unconstitutional but counseled him that flouting or challenging the laws could cause a problem for him. Instead, Capt. Carman devised a transfer for reasons other than race for the soldier, who was later married in Michigan.

Upon his discharge from the Army, the judge joined the family firm, Carman, Callahan & Sabino (now Carman, Callahan & Ingham) in his hometown of Farmingdale. The judge's private law practice ran the gamut from criminal defense to civil litigation to

commercial real estate transactions to banking, insurance, and tax counseling. The judge also engaged in numerous other business ventures. He was an owner of the *Farmingdale Observer*, the town's weekly newspaper, and also of a local termite extermination service. The judge also has invested in numerous successful commercial and residential real estate projects.

Judge Carman's partnership in the thriving family law practice and his other business activities did not hinder his commitment to public service. From 1972 until 1980, the judge was a councilmember for the Town of Oyster Bay (the second largest township in the United States). In 1980, the judge was elected to the 97th Congress and served a two-year term. While in Congress, the judge was a member of International Trade, Investment, and Monetary Policy Subcommittee of the House Banking Committee.

President Reagan's appointment of the judge to the U.S. Court of International Trade coincided with the end of Judge Carman's term in Congress. The judge was honored to accept the appointment and welcomed the opportunity to again be near his children, who were still in school.

Judge Carman's parents were thrilled by his confirmation to the bench and were proud of his achievement. One evening, after dinner with his parents, the elder judge and Mrs. Carman presented the new Judge Carman with the elder judge's robe. The newly appointed judge was understandably touched but also a bit troubled. The elder Judge Carman's robe was in tatters, having been well-used and well-worn. Young Judge Carman did not want to be disrespectful but also could not imagine wearing the gifted robe on the bench. His mother, noticing the hint of dismay on his face explained that the elder Judge Carman's robe had been given to their son symbolically and sentimentally. Young Judge Carman's parents then gave him a check with which to purchase a new robe.

Young Judge Carman took that check to a purveyor of robes in midtown Manhattan, at which he followed his colleagues' suggestion and selected a smart, lightweight robe. The judge thought little of the robe, which was hanging in its garment bag, until he needed it for his first appearance on the bench. When he unzipped the bag, Judge Carman found a note attached to the robe, which read "Congratulations. You have just purchased a very fine, high-quality robe. If you care for this robe, it will give you many years of fine service, and you and your choir director will be very happy." Judge Carman can still be seen in his choir robe when he is on the bench.

Judge Carman's philosophy as a judge was influenced by a college visit he made to the International Court of Justice in The Hague, where he noticed that Lady Justice was not wearing a blindfold. When the judge inquired about the absence of the blindfold, he was told that her blindfold had been removed to enable her to see everything in order to dispense justice with mercy and compassion. The judge endeav-

ors to do the same and relates this anecdote to new judges in hopes that they too will dispense justice with mercy and compassion.

In the judge's view, the legal profession is one of the highest callings upon which a person can embark. Judge Carman believes strongly that lawyering involves a sacred trust that must be exercised with care and diligence. "It is the job of a lawyer as well as a judge to use the power and authority entrusted to him with the least exertion necessary to solve the given problem," he says.

In his leadership role at the Court of International Trade—as acting chief judge in 1991 and as chief judge from 1996 to 2003—Judge Carman served as a member of the Judicial Conference's Executive Committee, the Judicial Branch Committee, and its Subcommittees on Long-Range Planning, Benefits, Civic Education, and Seminars. During this service, the judge began to appreciate the impact on the federal judiciary of the disparity in pay with the private sector. According to the judge, at the current pay scale, it is difficult to entice "the best of the legal profession" to give up lucrative practices in order to ascend to the bench. Judge Carman recognizes the ethical limitations placed on judges to protest their salaries. On the other hand, according to the judge, the demand for a more equitable pay scale goes beyond the refrain of any individual judge. As Judge Carman notes, "judicial pay reform is necessary to maintain an independent and credible judiciary that is the envy of the world."

To justify the urgent need for salary reform, the judge cites the factors identified in the Volker Commission's report to the National Commission on the Public Service that was issued in 2002:

- The purchasing power of salaries has declined sharply.
- Salaries in other sectors of the economy have increased substantially.
- The quadrennial salary review mechanisms provided by the Ethics Reform Act of 1989 have not been allowed to operate as intended.
- As a result of the limits placed on salaries, pay compression and pay inversion are having a corrosive effect on the federal salary scale.

The passage of time since the study has only exacerbated the situation. As the judge points out, the Volker Commission concluded that "[j]udicial salaries are the most egregious example of the failure of federal compensation policies." The judge agrees with the Volker Commission's recommendation that Congress should "grant an immediate and significant increase in judicial, executive, and legislative salaries to ensure a reasonable relationship with other professional opportunities." However, Judge Carman

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Judicial Profile

INA BORT

Hon. Delissa A. Ridgway Judge, U.S. Court of International Trade

PERHAPS THE BEST indication of what a fascinating life Judge Delissa A. Ridgway has led is the fact that, during our three hours together (which felt like 30 minutes), we scarcely broached the subject of her current position as one of the nine judges sitting on the U.S. Court of International Trade. Her experiences leading up to



that appointment to the court in 1998 make for riveting conversation, as I learned during my recent interview with her.

One quickly gets the sense from Judge Ridgway that she is a person who forges opportunities, identifies possibilities for growth and development in whatever situation in which she finds herself, and pursues them with single-minded focus. She has done so as a girl growing up in the Missouri Ozarks, as a student on the cam-

pus of the University of Missouri, and as a high-powered lawyer in Washington, D.C. Judge Ridgway's abilities in this regard have enabled her to shape her life into a genuinely amazing story.

Delissa Ridgway was born in a Missouri town with a population of 1,200. Her father was a physician, a general practitioner who ran a clinic in a nearby—and smaller—town that had a population of 100. She is the eldest of five children. After completing high school in three years (and being the first student at her high school to have ever done so), she went on to the University of Missouri, from which she graduated in three years as well. (One experience that

Judge Ridgway has never had, in other words, is being a senior.) She attended graduate school at the University of Missouri for one year, concentrating in international development. While there, she founded the local chapter of the Public Interest Research Group, a consumer protection organization founded by Ralph Nader. Her initiatives with the group included campaigning for unit pricing in grocery stores, which we now take for granted, and exposing pharmacies' exploitative practices in the pricing of prescription drugs, an effort that revealed that pharmacies spiked the prices of drugs in neighborhoods where shoppers were less mobile because they were either elderly or impoverished and, therefore, not equipped to engage in comparison shopping. Judge Ridgway, who met Nader on a number of occasions, describes him as "someone who has fundamentally changed the way we see the world." It was Nader who drove Ridgway's choice of law schools; he held Boston's Northeastern University in high regard because of its emphasis on public interest law. Judge Ridgway enrolled at Northeastern after a year in graduate school and found law school to be a very rewarding experience, where she encountered a type of diversity that she had not previously seen: racial and ethnic differences as well as a range of ages because of the large number of students who were entering law as a second career. Northeastern is unique for its co-op program, in which, in addition to their classroom work, students work in four different jobs by the time they graduate. The judge's last externship was with Judge June Green, a district judge in Washington, D.C., and one of the first women in the country to serve on the federal bench.

After graduating from law school, Judge Ridgway had applications pending at various law firms, but she did not have a permanent job lined up; therefore, she returned to a small plaintiffs' litigation firm where she had worked during her years at Northeastern. While there, the firm became involved in a personal injury case that was about to go to trial. The case was before Judge Green. During a status conference on the case, Judge Green told counsel for both sides how impressed she had been with Ridgway's work as an extern. The defendant, an airline, was represented by Shaw Pittman (one of the largest law firms in Washington, D.C.), and the firm's recruiting partner

happened to be head of the firm's Aviation Department. With Judge Green's glowing recommendation, Ridgway's application was accepted, and she joined Shaw Pittman in fall 1979.

It was in 1979 that the Three Mile Island accident occurred, and Shaw Pittman represented the owners of Three Mile Island facility, among many other nuclear utility companies. As an alumna of the Ralph Nader "School," Judge Ridgway initially resisted working on these cases, but then became involved when it became clear that these cases would afford her hands-on, front-line experience more quickly than other kinds of work could. Two different presidential commissions were investigating the Three Mile Island accident at the time, which meant that Ridgway was able to participate in high-profile depositions from her very first days at the firm.

The judge spent 15 years at Shaw Pittman, initially focusing on cases involving nuclear energy. At the time, only a couple of women were working in the field of nuclear energy in general, and attorneys in that practice group at the firm were all male, and mostly military men—graduates of the legendary Admiral Rickover's nuclear program at the U.S. Naval Academy. In the wake of the Three Mile Island accident, the regulatory scheme—which had previously focused primarily on the design of nuclear power plants—was expanded to require detailed emergency planning. All the existing practitioners in the field had backgrounds in nuclear physics or engineering. But Ridgway's credentials in public interest work and her background in community organizing made cases involving emergency preparedness a natural fit. She gravitated to the area because of the tremendous opportunities it afforded for both policy-making and the law. In time, she became the country's leading legal expert on emergency planning for nuclear incidents.

As the years passed, however, the tide began to turn; fewer and fewer nuclear plants were being built in the United States, and the legal work was, accordingly, drying up. Rather than being caught without a specialty, Ridgway developed a new area of expertise: international arbitration. She began to re-invent herself when the government of what was then Yugoslavia hired her firm to sue a U.S. manufacturer for a failed nuclear project, the relevant contract for which contained a clause relating to international arbitration. No one at the firm had any experience in international arbitration, and Ridgway seized the opportunity. Once again, this was an area in which almost no women—indeed, few Americans, male or female—practiced at that time. But Judge Ridgway forged ahead and outlined an aggressive business plan for herself. She knew that it would take an effort to establish herself as an expert and that it was important to publish, write, and teach. She began by speaking at conferences of international arbitrators and practitioners in the field. She also networked with the secretariat at the International

Court of Arbitration at the International Chamber of Commerce in Paris and convinced them to appoint more women and more Americans as arbitrators. Soon 100 percent of Ridgway's workload involved international arbitration. She served as an international arbitrator in a number of cases and as counsel in many more, generally representing foreign sovereigns from the developing world.

At around the same time, Ridgway was becoming increasingly involved in bar activities and national politics. She became active in Bill Clinton's first presidential campaign, organizing events and raising money, particularly from the swelling ranks of female partners of law firms—women who, for the first time ever, were starting to be recognized as a significant potential source of campaign funds. Long active in the Federal Bar Association at the local and national levels, Judge Ridgway was elected to the D.C. Bar Board of Governors and also served as president of the Women's Bar Association. As if there were additional time left in the day, she also founded the Democratic National Committee's Women's Leadership Fund, which was designed to get more women involved in politics. She enjoyed her fundraising activities in connection with the Clinton campaign, because she felt that her efforts actually empowered the women to whom she spoke. By suggesting to them how to position themselves as players in the political arena, she felt that she was teaching them how to be a force to be reckoned with.

After Clinton was elected, Ridgway was tapped to chair the Justice/Judiciary Task Force of the Coalition for Women's Appointments, a bipartisan coalition of more than 95 women's organizations nationwide. In keeping with Clinton's promise to name an administration that "looked like America," Ridgway's task force worked with the White House to identify female attorneys from across the country for presidential appointments to fill top slots at the Department of Justice, in federal agencies' general counsel positions, and on the federal bench at both the trial and appellate levels.

In time, Ridgway would receive the first appointment of her own: in 1994, Clinton appointed her to head the Foreign Claims Settlement Commission, an international tribunal consisting of only three members. The tribunal adjudicated claims by U.S. nationals (individuals as well as corporations) against foreign sovereigns. Most of these claims, which usually arose under treaties, involved expropriation of property and arose in tandem with the many regime changes that were taking place in the early 1990s. The passion with which Ridgway described her tenure on the Foreign Claims Settlement Commission was truly inspiring.

One of the commission's programs involved claims against Iran, arising from the 1979 revolution in that country. Iran had agreed to pay the United States a lump sum in settlement of all "small claims," which

RIDGWAY *continued on page 41*

cedures that would satisfy the needs of the Court, the claimants, and the trade bar.

Judge Restani draws law clerks from national law schools. Her current crop is from the University of Michigan, the University of Southern California, and Columbia University, but she strives to maintain a broad mix. The work is demanding but satisfying, according to Professor Wise. “The learning curve is very serious,” the judge’s former law clerk says, “I have great respect for the trade bar.” “I loved clerking for her,” says Eric Rubel, “she was fantastic.” Judge Restani permits her clerks to be “very active in the deliberative process,” he adds, and she “welcomes [the clerk’s] thoughts.” Judge Restani maintains a warm relationship with many of her former clerks and invites them for a picnic once a year.

Judge Restani clearly enjoys being a judge, and she goes outside her own court to practice her craft. As Article III judges, members of the Court of International Trade are eligible to sit throughout the country, by designation—an eligibility that Judge Restani has accepted with energy and enthusiasm. She has sat as a judge on the U.S. Court of Appeals for the First, Second, Third, Fourth, Fifth, Sixth, Ninth, Eleventh, Federal, and District of Columbia Circuits, and has sat as a U.S. district judge in New York, Connecticut, Florida, and Texas. When the court’s Web site says that potential clerks “must be willing to travel for circuit court work,” it isn’t a joke. Travel is also part of the regular business of the court, which has nationwide jurisdiction and is authorized to hear cases in any judicial district in the country.

Her already considerable obligations were

increased in 2003, when she was elevated to the position of chief judge and accepted the additional burdens of administering the court. According to her colleagues, she has handled the added responsibilities without missing a beat. “Her management style is to delegate,” says fellow Court of International Trade Judge Richard Eaton. “She is not a micromanager in any way, shape, or form. She is a very good manager.”

One of Judge Restani’s additional tasks is putting up with requests for interviews and speaking engagements. She bears the burden with patience and humor, which would not surprise her intimates, who regard her sense of humor as highly as they value her energy and intelligence. “Jane has a raucous sense of humor and is terrifically good company,” says her former colleague, Marc Levinson. In our final interview for this profile, Judge Restani remarked that her public duties involved regular and repeated opportunities for the predictable praise of profiles like this one. She shared the time she attended a bar association dinner with a lawyer against whom she had just ruled. “Throughout the dinner all I heard was what an idiot I am,” she said with easy laughter. However much her public duties have forced her to curb her mischievous side, it is still there—and still vibrant. **TFL**

Phil Schatz is a member of Wrobel & Schatz LLP and practices commercial litigation in federal and state courts in New York City. He has walked by the Court of International Trade hundreds of times and did not have a clue about what it did until he got this assignment.

bemoans: “Of course, this has not happened. Rather, fine jurists like J. Michael Luttig have left the bench for more lucrative positions in the private sector.”

Judge Carman echoes Sen. Dianne Feinstein’s (D-Calif.) comments in the *Congressional Record* that “first-year law school graduates at [major] law firms make more than experienced federal judges.” This reality concerns Judge Carman, and he stresses that the current situation should motivate Congress to act—to attract and retain not only the brightest and best jurists but also those in the legislative and executive branches of government. Judge Carman calls on members of the bar “to pick up the mantle of leadership and demonstrate to the public and Congress the need for swift action to correct the salary inequities that exist.”

Despite the salary restrictions, Judge Carman has enjoyed being a federal judge. His position on the Court of International Trade allows him the opportu-

nity and flexibility to sit by designation in district and circuit courts throughout the United States. The judge feels that he and his two law clerks benefit personally and professionally from the experience with general subject matter jurisdiction that they gain in the courts.

When time permits, Judge Carman and his wife, Judith Dennehy Carman, enjoy the theater and international travel. Judge Carman has four children from a previous marriage; his three sons are all lawyers. Between them, the Carmans have seven children and 14 grandchildren, who bring added joy to their lives.

TFL

Yvonne M. Hilst has been a law clerk to Judge Carman at the U.S. Court of International Trade since 2004. She received her J.D. from Chicago-Kent College of Law and has practiced law in Illinois and the Netherlands.

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were defined as claims for \$250,000 or less. Other cases that the tribunal addressed during Ridgway's tenure involved Albania and Vietnam. But, by far, the most moving experience involved the landmark case of Hugo Princz.

Princz was a Jewish teenager living in what is now Slovakia at the time the Nazis invaded. His father tried without success to secure safe passage for the family. Hugo Princz and his siblings had U.S. citizenship through their father, who had worked in the United States for several years and had become a U.S. citizen. Ultimately, the family was rounded up and dispatched to concentration camps. When the war finally ended, Princz, like so many others, roamed Europe in an effort to locate loved ones. But only Hugo had survived. He eventually moved to the United States and became a grocer in New Jersey. In the postwar years, West Germany established a number of reparations programs. Princz repeatedly applied, but each time he was rebuffed and deemed ineligible, based on his U.S. citizenship.

Outraged that this privilege of citizenship barred him from reparations but had done nothing to protect him from the horrors of the concentration camps, Princz sought to sue Germany. A young attorney took his case pro bono. The action was filed in Washington, D.C., federal court and, by a stroke of extremely good fortune, was assigned to Hon. Stanley Sporkin, a judge who has been described as someone who would "never let the law get in the way of justice." Germany swiftly moved to dismiss the case, invoking foreign sovereign immunity, but Sporkin denied the motion. Although his decision was reversed on appeal, it laid the groundwork for bills introduced in Congress to authorize the case to proceed. Faced with the prospect of a high-profile trial that was related to the Holocaust before a U.S. jury, West Germany entered into a treaty establishing a reparations fund for U.S. survivors of the Holocaust. The Foreign Claims Settlement Commission spent two and one-half years in an effort to identify and locate eligible claimants and to document and adjudicate their claims for deprivation of liberty under the terms of the treaty. Judge Ridgway described her work in this case as "more like social work than law"

and found her involvement to be very intense emotionally. Departing from the general practice in the field of international claims, the commission issued detailed opinions in all the cases related to the Holocaust cases. In Judge Ridgway's view, this was the least that they deserved.

Ridgway served on the Foreign Claims Settlement Commission from 1994 to 1998, when a vacancy opened up at the U.S. Court of International Trade, an Article III trial-level federal court based in New York that has exclusive nationwide jurisdiction over cases involving the customs and international trade laws of the United States. Although she was reluctant to leave her life and work in Washington, D.C., she ultimately could not resist the pull of a lifetime appointment.

Judge Ridgway enjoys her work on the court, describing it as a "little known stealth court." But even though the court may not be widely known, Judge Ridgway explains that it is an important tribunal, particularly in today's era of globalization. She finds her work fascinating because of the diversity of the cases over which the court presides—cases that not only are intellectually stimulating but also afford her and her colleagues the opportunity to learn about industries and foreign countries in tremendous depth. When asked about the area in which she has had the most influence while serving on the court, Ridgway cites her work on cases arising under the Trade Adjustment Assistance program. This program, which was founded in the era of President John F. Kennedy, exists to aid individuals who have lost their jobs as a consequence of international trade. Theoretically, the program is supposed to provide unemployment benefits and training to such individuals, but many problems have arisen related to the way the U.S. Department of Labor has administered the U.S. program—problems that Ridgway has sought to address in her decisions adjudicating claims arising under the program.

We are extremely fortunate to have Judge Delissa Ridgway in our midst. **TFL**

Ina Bort is a partner at Kornstein Veisz Wexler & Pollard LLP in Manhattan.

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wonderful colleagues—intelligent and always willing to help, not only to complete our judicial duties but also to participate in administrative responsibilities, which can be so time-consuming for a chief judge. They have relieved me of much work so that I can continue to carry a full caseload here and also help more burdened courts. They are also a great bunch to have lunch with. Of course, my own staff, my fabulous executive assistant, and all of my law clerks over the years have conspired to make me appear learned.

Finally, anyone who practices here knows how dedicated to serving the public our court staff is. The judges are as grateful to them as the bar is. I thank the Empire State Chapter of the Federal Bar Association for its interest in our court, and I accept this honor for myself and the entire court. **TFL**

Hon. Jane A. Restani is the chief judge of the U.S. Court of International Trade.