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SPECIAL SESSION OF THE
UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

ON THE OCCASION OF
THE 225TH ANNIVERSARY OF THE FIRST SESSION OF A
UNITED STATES COURT

HELD IN NEW YORK, NEW YORK
ON THE FIRST TUESDAY OF NOVEMBER, 1789

BY
HONORABLE JAMES DUANE, DISTRICT JUDGE

United States Courthouse
500 Pearl Street
New York, N.Y.

November 4, 2014
4:00 p.m.

1 PRESENT:

2 HON. LORETTA A. PRESKA
3 *Chief Judge, Presiding*

4 HON. THOMAS P. GRIESA
5 HON. KEVIN THOMAS DUFFY
6 HON. CHARLES S. HAIGHT, JR.
7 HON. ROBERT W. SWEET
8 HON. JOHN F. KEENAN
9 HON. LOUIS L. STANTON
10 HON. MIRIAM GOLDMAN CEDARBAUM
11 HON. KIMBA M. WOOD
12 HON. DEBORAH A. BATTIS
13 HON. LEWIS A. KAPLAN
14 HON. JOHN KOELTL
15 HON. DENISE COTE
16 HON. SHIRA A. SCHEINDLIN
17 HON. SIDNEY H. STEIN
18 HON. JED S. RAKOFF
19 HON. ALVIN K. HELLERSTEIN
20 HON. RICHARD M. BERMAN
21 HON. COLLEEN McMAHON
22 HON. WILLIAM H. PAULEY, III
23 HON. NAOMI REICE BUCHWALD
24 HON. VICTOR MARRERO
25 HON. GEORGE B. DANIELS
HON. LAURA TAYLOR SWAIN
HON. P. KEVIN CASTEL
HON. KENNETH M. KARAS
HON. PAUL A. CROTTY
HON. RICHARD J. SULLIVAN
HON. CATHY SEIBEL
HON. VINCENT L. BRICCETTI
HON. J. PAUL OETKEN
HON. PAUL A. ENGELMAYER
HON. ANDREW L. CARTER
HON. EDGARDO RAMOS
HON. RONNIE ABRAMS
HON. LORNA G. SCHOFIELD
HON. KATHERINE POLK FAILLA
HON. ANALISA TORRES
HON. NELSON STEPHEN ROMAN
HON. VERNON S. BRODERICK
HON. GREGORY HOWARD WOODS
HON. VALERIE CAPRONI

District Judges

1 THE CLERK OF COURT: All rise.

2 The Judges of the United States District Court for the
3 Southern District of New York.

4 (The Judges assemble.)

5 THE CLERK OF COURT: Hear Ye, Hear Ye. All persons
6 having business before the Special Session of the United States
7 District Court for the Southern District of New York draw near,
8 give your attention, and you shall be heard. The Honorable
9 Chief Judge Loretta A. Preska presiding.

10 (Procession of the New York Ancients Fife and Drum
11 Corps; the Honorable Preet Bharara, United States Attorney; the
12 Honorable Eric Timberman, United States Marshal, Acting; and
13 Patrick J. Bonner, Lizabeth L. Burrell, Raymond P. Hayden, and
14 Chester D. Hooper of the Maritime Law Association.)

15 CHIEF JUDGE PRESKA: Please remain standing for our
16 national anthem.

17 (National Anthem.)

18 CHIEF JUDGE PRESKA: Please be seated, ladies and
19 gentlemen.

20 Madam Clerk: Please read the commission by the
21 President of the United States appointing James Duane of New
22 York a United States District Judge.

23 THE CLERK OF COURT: George Washington, President of
24 the United States of America:

25 "To all who shall see these Presents -- Greeting:

1 "Know Ye, that reposing special trust and confidence
2 in the wisdom, rightness, and learning of James Duane of New
3 York, Esquire, I have nominated and by and with the advice and
4 consent of the Senate do appoint him Judge of the District
5 Court in and for New York District; and do authorize and
6 empower him to execute and fulfill the duties of that office
7 according to the Constitution and laws of the said United
8 States, and to have and to hold the said office, with all the
9 powers, privileges, and emoluments to the same of right
10 appertaining unto him, the said James Duane, during his good
11 behavior. In testimony whereof, I have caused these letters to
12 be made patent and the seal of the United States to be hereunto
13 affixed.

14 "Given under my hand, the twenty-sixth day of
15 September in the Year of Our Lord one thousand seven hundred
16 and eighty-nine. G. Washington."

17 CHIEF JUDGE PRESKA: Today we are here to celebrate
18 the 225th anniversary of the first sitting of the Southern
19 District of New York. On November 3 of 1789 -- the first
20 Tuesday of November, 225 years ago -- the United States
21 District Court for the District of New York convened its first
22 session at the Old Royal Exchange on Broadway, in Lower
23 Manhattan. As all of you know, our first session came three
24 months before the first sitting of the United States Supreme
25 Court, which took place on February 2 of 1790. Because the

1 District of New York was the first to sit following the passage
2 of the Judiciary Act of 1789, which established the 13 district
3 courts along the outlines of the 13 original colonies, our
4 Court has come to be known as the "Mother Court."

5 I hasten to add that that first sitting in no way
6 reflected the Court's docket of today. Indeed, the news report
7 of that first sitting read, in its entirety, "On Tuesday, the
8 Federal Court for the District of New York opened in the
9 Exchange. His Honor, Judge Duane, presiding. No business
10 being before the Court, the same was immediately adjourned."

11 Judge James Duane, a member of the Continental
12 Congress, the first Mayor of the City of New York after the
13 British evacuated, and our first District Judge, was notified
14 of his nomination and appointment -- and granted his
15 Commission -- by a letter from President George Washington. It
16 does appear that the confirmation process was a little bit
17 easier then. The letter read:

18 "United States, September 30, 1789.

19 "Sir:

20 "I have the pleasure to enclose to you a commission as
21 Judge of the United States for the District of New York, to
22 which office I have nominated and, by and with the advice and
23 consent of the Senate, appointed you.

24 "In my nomination of persons to fill offices in the
25 Judicial Department, I have been guided by the importance of

1 the Object -- Considering it as of the first magnitude and as
2 the Pillar on which our political fabric must rest, I have
3 endeavored to bring into the high offices of its administration
4 such characters as will give stability and dignity to our
5 national Government -- and I persuade myself they will discover
6 a true desire to promote the happiness of our country by a
7 ready acceptance of their several appointments.

8 "The laws which have passed relative to your office
9 accompany the commission.

10 "I am, Sir, with very great esteem, your most obedient
11 servant,

12 "G. Washington."

13 The 30 men admitted to the Bar of this Court during
14 that first sitting included the Mayor of the City of New York,
15 Richard Varick; two future judges of this Court, John Laurence
16 and Robert Troup; a future judge of the District of New Jersey,
17 Robert Morris; a future -- and the first -- Chief Judge of the
18 Second Circuit, Egbert Benson; a future Vice President of
19 United States, Aaron Burr; and a future Justice of the Supreme
20 Court of the United States, Brockholst Livingston.

21 Madam Clerk, please read the roll of the 30 men who
22 were admitted to the bar of this Court on the first Tuesday of
23 November 1789.

24 THE CLERK OF COURT: Richard Harrison, Richard Varick,
25 John Cozine, John Laurence, Cornelius Bogert, Peter Ogilvie,

1 Robert Troup, Balthazar DeHaert, George Bond, Robert Morris,
2 Thomas Smith, Egbert Benson, Aaron Burr, Henry Brockholst
3 Livingston, James M. Hughes, John H. Walkins, Peter Masterson,
4 Thomas Cooper, Michael D. Henry, Flameu Ball, James DeHaert,
5 Leonard Cutting, Joseph Ogden Hoffman, Thomas Smith Jr., Joseph
6 Strong, James Thompson Jr., John Keese, Nathaniel Laurence,
7 Absolom Blackly, Augustus Sackel.

8 CHIEF JUDGE PRESKA: Now, as then, the unparalleled
9 quality of the New York Bar allows our Court to flourish, so it
10 is only appropriate that a representative of that group be
11 heard from today. As the late Honorable Judge Edward Weinfeld
12 remarked, the New York Bar is truly "illustrious," and it was
13 its reputation that helped to attract additional litigation to
14 our District and to grow the District beyond its original
15 Admiralty roots. It is doubtful that our Court could have
16 attained the stature or the caseload it maintains today without
17 such illustrious attorneys.

18 At this time I call upon Robert B. Fiske Jr. of the
19 bar of this Court to deliver brief remarks as a successor to
20 those original 30 lawyers. Mr. Fiske, a former United States
21 Attorney of this District, honored this Court by delivering
22 remarks at our 200th anniversary.

23 Mr. Fiske.

24 MR. FISKE: Chief Judge Preska, Judges of the Southern
25 District, friends of the Mother Court:

1 It is indeed an honor to have been asked to address
2 you all on this extraordinary occasion. As Judge Preska
3 indicated, 25 years ago, in 1989, I also had the honor of
4 addressing this Court -- which at that time included just 11 of
5 our current judges -- at the celebration of its 200th
6 anniversary. In that speech, I focused on two themes that I
7 saw as central to the "Mother Court" over the first 200 years:
8 (1) its persistent change and growth, and (2) the breadth and
9 diversity of its cases. It is these things that demonstrated
10 the truth of Judge Thomas D. Thacher's words from the 150th
11 anniversary in 1939:

12 "I venture to say that no other district court in this
13 country, or any other court in any other land, exercises a
14 jurisdiction comparable in scope and importance with the
15 jurisdiction exercised by this Court."

16 Although much has changed in the last 25 years, these
17 words of Judge Thacher are still the Court's hallmark.

18 In my 1989 speech, I traced the development of this
19 Court during its first 200 years. Judge Castel has advised me
20 that everyone will be receiving a copy of that speech in
21 materials to be distributed later. So, because time is
22 limited, I would like to focus on a few areas of the last 25
23 years that I see as particularly noteworthy. Specifically I
24 would like to talk about the declining number of trials, the
25 impact of technology, and the diversity of the bench. Then I

1 would like to briefly turn to some of the substantive issues
2 that the Court grapples with today, which were inconceivable in
3 1789 -- many of which were inconceivable in 1989.

4 Twenty-five years ago, in the fiscal year ending in
5 September 1989, 5,487 cases were filed in the Southern
6 District. In the period of June to June of that year, 705
7 trials were conducted. In contrast, in the fiscal year ending
8 just now, September 2014, 12,590 cases were filed, and there
9 were 229 trials. The percentage of cases that went to trial in
10 1989 was just under 13 percent. That percentage this year was
11 under 2 percent. This general trend of a decline in trials in
12 the Southern District mirrors what is happening throughout the
13 federal court system. It is a subject for another day, but to
14 many of us in the trial bar, this concept of the vanishing
15 trial and, with it, the vanishing trial lawyer presents serious
16 issues for the administration of justice and the stature and
17 standing of the legal profession.

18 Twenty-five years ago I talked about how technological
19 advances, such as computers and word processing, had eased the
20 burden of the court. That was 1989. We didn't even have
21 e-mail yet. In the last 25 years, we have seen the advent of
22 major technological changes, advances such as the electronic
23 filing system, which provides instant -- real time --
24 communications between litigants and the courts, as well as
25 electronic court reporting, video conferencing, and numerous

1 other advances which make the Clerk's office more efficient.
2 When I tried a case in 1991, we were still handing out
3 individual copies of exhibits one by one to each of the jurors
4 in the box. Today of course it's all on a screen
5 instantaneously for all to see, with highlighting to emphasize
6 important points. Done well, it obviously provides more
7 effective communication with jurors and more effective
8 advocacy.

9 Third, it is certainly worth reflecting on how the
10 diversity of the Court has continued to change -- and
11 improve -- over time. Until 1966, this Court was composed
12 entirely of white men. That year, Judge Motley, an
13 African-American female judge, was appointed to the Mother
14 Court, and it has since grown into a far more representative
15 and diverse body in terms of gender, race, and professional
16 background. And the last 25 years have seen giant strides. In
17 1989, when I last spoke, the active judges of the court
18 included 19 white men, three white women, and one
19 African-American. Today, the acting judges of the Court
20 include 11 white men, eight white women, five African-American
21 men and women, and four other men and women of Puerto Rican,
22 Dominican, and Filipino ancestry. In addition, there are now
23 three openly gay judges -- something that did not exist in
24 1989. On another positive note, in 1989 I lamented the
25 significant delays in filling vacancies that left the Southern

1 District bench with only 22 of the 27 authorized judgeships.
2 Today, the court has 28 authorized judgeships -- one new one in
3 the last 25 years -- and all are filled.

4 Turning to substantive issues, as the world around us
5 changes, new issues and new conflicts develop. These
6 developing issues and conflicts in turn require the judgment,
7 expertise, and wisdom of this Court.

8 Global tensions throughout the world have contributed
9 to many new issues today that the Mother Court must deal with.
10 Although the question of whether civil or military courts
11 should handle terrorism cases has been a matter of debate, the
12 Judges of Southern District have demonstrated that they have
13 the experience, expertise, and capacity to try these cases.

14 In 1995, Judge Michael Mukasey presided over a
15 nine-month trial in which ten defendants were convicted of
16 seditious conspiracy and other offenses based on their plot to
17 blow up the World Trade Center, United Nations headquarters,
18 and various other locations in and around New York. The lead
19 defendant, Omar Abdel Rahman, known as the "Blind Sheikh," was
20 sentenced to life in prison. In affirming the convictions, the
21 Second Circuit said, in language very similar to that used
22 later in affirming convictions in terrorism trials presided
23 over by Judges Duffy and Sand, "The trial judge...presided with
24 extraordinary skill and patience, assuring fairness to the
25 prosecution and to each defendant and helpfulness to the jury.

1 His was an outstanding achievement in the face of challenges
2 far beyond those normally endured by a trial judge."

3 A new part of the job of a Southern District judge is
4 the personal sacrifices that must be made when dealing with
5 terrorism cases. It is common for judges conducting these
6 cases to be guarded by marshals -- something that, to my
7 knowledge, had never occurred in the past.

8 Recently, the country's counterterrorism efforts have
9 been met with contentious debate over the proper balance
10 between national security and constitutional freedoms. Judge
11 Pauley was asked to invalidate the statute authorizing the
12 NSA's bulk collection of metadata as a violation of Fourth
13 Amendment rights. He upheld the statute, on the basis that the
14 information provided to a telecommunication provider cannot
15 reasonably be expected to be private. This controversial issue
16 raised much debate -- and a decision in another district going
17 the other way, by one of my former assistant U.S. attorneys --
18 but as always, the views of the Southern District judges are
19 central to the discussion.

20 Technological advancements unknown 25 years ago are
21 constantly creating new legal issues for the Court to consider.
22 How can we protect intellectual property without chilling
23 innovation? How do we support the new wave of Internet
24 providers while protecting our broadcasting industry? And how
25 can we uphold our First Amendment jurisprudence in a world

1 where anyone can provide content on a global scale with just a
2 few clicks of a button? These are complex issues. But in the
3 past 25 years, this Court has been instrumental in resolving
4 them. Southern District judges have ruled that isolated genes
5 are not eligible for patent protection, that advertisers' use
6 of programs that store information such as user names and
7 passwords do not violate federal privacy statutes, and that the
8 mere act of posting a generic advertisement on the Internet
9 cannot be construed as an effort to target an individual in any
10 particular jurisdiction.

11 The Southern District Bankruptcy Court has handled a
12 number of major cases in the past 25 years -- cases that last
13 many years and require an enormous expenditure of resources.
14 In 2002, WorldCom filed for bankruptcy in the Southern
15 District. That was, at the time, the largest bankruptcy
16 proceeding ever conducted in the United States. The record was
17 soon broken, however, by the Lehman Brothers bankruptcy. And
18 the large, complex cases didn't stop there. The Bankruptcy
19 Court has handled the reorganization of General Motors, Enron,
20 Delta, Chrysler, Kodak, and the Madoff bankruptcy. These are
21 truly enormous undertakings, and the Southern District
22 Bankruptcy Court has demonstrated its expertise in handling
23 them efficiently.

24 Finally, it is worth noting this Court's role in the
25 area of major financial litigation. It has sought to deal with

1 issues arising from a new wave of envelope pushing in insider
2 trading cases and has sought to provide increased transparency
3 in the regulation of our financial institutions.

4 Before I end, I should note, however, that not all of
5 the substance of today's cases would be foreign to Judge Duane
6 or those in attendance at the anniversary 25 years ago.
7 Traditional litigation, including major constitutional issues,
8 is prevalent in the Southern District. And admiralty cases,
9 the bread and butter of Judge Duane's work, still have
10 relevance. One of the most significant cases in the past 25
11 years was in 2000, after the crash of Flight TWA 800, when
12 Judge Sweet faced important questions of first impression
13 regarding admiralty law and, more specifically, the Death on
14 the High Seas Act. This serves as a reminder that while much
15 around us changes, much is still the same.

16 As the world continues to evolve, so will the
17 challenges facing this Court. History has demonstrated that it
18 is well equipped to handle these changes, and that is true now
19 more than ever. The Court has an exceptional new class of
20 judges that bring new life and fresh perspective to the Court.
21 And it has also a beautiful new (although some of us consider
22 it old) courthouse in which to carry out its important work.

23 I closed my speech in 1989 with a statement about what
24 I considered a very special characteristic of the Southern
25 District. It is equally true today, so I will say it again:

1 What we see, then, looking back -- and I would say
2 looking ahead as well -- is a high volume of civil and criminal
3 litigation which -- perhaps appropriately for the "Mother
4 Court" -- is unmatched in any other court for its combination
5 of diversity, newsworthiness to the public, and importance to
6 the precedent-setting evolution of the common law. An
7 important reason for that, of course, is reflected in what is
8 here, and what goes on, in New York City. Another important
9 reason over the years has been traditional high quality of the
10 judges in this Court. To once again quote from the 150th
11 anniversary, using the words of Chief Justice Hughes:

12 "The courts are what the judges make them, and the
13 District Court of New York, from the time of James Duane,
14 Washington's first appointment, has had a special distinction
15 by reason of the outstanding abilities of the men" -- and, I
16 would add, women -- "who have been called to its service."

17 I could not close without taking note of a very
18 special characteristic of the Southern District: the sense of
19 collegiality which pervades the relations among the judges, and
20 between the judges and the lawyers who practice before this
21 Court. This esprit de corps is remarkable and something we can
22 all be proud of. This partnership -- this kinship -- is the
23 heritage of our predecessors. We honor their achievements
24 today and hope that all of us in the years to come can continue
25 to contribute to the distinction of this great institution.

1 (Applause)

2 CHIEF JUDGE PRESKA: Thank you, Mr. Fiske. It is our
3 hope that you will join us for the Court's 250th anniversary.

4 MR. FISKE: Mine too.

5 CHIEF JUDGE PRESKA: Now, ladies and gentlemen, you
6 will have noted that United States Marshal Eric Timberman
7 processed down the center aisle holding aloft a large shiny
8 object. He was followed by representatives of the Maritime Law
9 Association. Returning to the Mother Court to explain the
10 significance of the silver oar and to remind us of our roots as
11 an admiralty court is our beloved colleague, Judge Charles S.
12 Haight Jr. I call upon the Marshal to deliver the silver oar
13 to Judge Haight.

14 (The Marshal delivers the Oar to the Bench.)

15 CHIEF JUDGE PRESKA: Judge Haight.

16 JUDGE HAIGHT: Chief Judge Preska, judicial
17 colleagues, distinguished co-celebrants of this anniversary:

18 If we could be transported in time back to the first
19 Tuesday of November, 1789, and attend the first session of this
20 Court before Judge Duane, and at its conclusion we left Judge
21 Duane's courtroom, possibly a more modest space than this one,
22 and ventured out into the streets and among the buildings of
23 Lower Manhattan as they existed in 1789, the world would seem
24 to be a completely different place from what it is now.

25 But if on November 3rd, 1789, we left Judge Duane's

1 courtroom, went to a Manhattan Island pier, and boarded a ship
2 which cast off her lines, set sail, and steered a 90 degree
3 course toward Europe, then in several hours the surrounding
4 world would seem to be just the same then as it is now, as the
5 land disappears astern and we find ourselves on the vast and
6 trackless Atlantic ocean, our property and lives dependent upon
7 the seaworthiness of the vessel carrying us and the skill of
8 the mariners directing her navigation. Then, just as now,
9 human fortunes were governed by the general maritime law, also
10 called admiralty. When this Court began 225 years ago, there
11 were, just as now, admiralty courts, admiralty judges, and
12 admiralty lawyers. In an opinion in 1815, Justice Story wrote:
13 "The admiralty is a court of very high antiquity, with a strong
14 probability of its existence in the reign of Richard I, since
15 the laws of Oleron, which were compiled and promulgated by him
16 on his return from the Holy Land, have always been deemed the
17 law of the admiralty." Justice Story might have noted that
18 maritime laws were also traceable to the ancient Rhodians and
19 Phoenicians, well before Richard I's reign began in the 12th
20 century. So it is not surprising that when this Court opened
21 for business 225 years ago, it was largely limited in its
22 jurisdiction to maritime cases, and remained so for the next
23 hundred years, a century which, as Judge Rakoff pointed out in
24 his recent review of the history of the Court, saw the
25 expansion of the nation's maritime commerce and its increased

1 concentration in the Port of New York. While today the judges
2 of the Court deal with issues of civil and criminal law that
3 Judge Duane could never have dreamt of, maritime cases continue
4 to be an important percentage of those filed. In 1999, when
5 chief Judge Charles Brieant addressed the centennial
6 celebration of the Maritime Law Association of the United
7 States, he reported that in 1998, 748 maritime cases were filed
8 in the Southern District of New York, 7 percent of the civil
9 cases filed.

10 In its earliest days, Addison Browne was this Court's
11 first great admiralty judge. There have been others. And in
12 1909, District Judge Learned Hand came to the Court and
13 remained until 1924, when he left to do something else
14 somewhere else. The fascination of admiralty law has the power
15 to attract previously untutored converts, as District Judge
16 Hand's career illustrates. Professor Gerald Gunther's
17 biography of Learned Hand describes Hand's achievement of
18 becoming "the nation's most eminent" admiralty judge as
19 "remarkable because he came to the bench without any background
20 in maritime law." "Nor," Gunther writes, "except for
21 occasional childhood ventures on a small sailboat near an
22 uncle's hotel in New London, Connecticut, did he have any
23 exposure to seafaring skills to help him adjudicate
24 controversies over accidents on navigable waters. Yet Hand
25 quickly mastered the intricacies. The best illustration of his

1 skills are found in his decisions in numerous ship-collision
2 cases."

3 Had he still been with us, District Judge Hand might
4 have brought those skills to bear when, in 1956, the passenger
5 ships *Andrea Doria* and *Stockholm*, each on a voyage between New
6 York and Europe, collided in the Atlantic. The ship owners,
7 Italian Line and Swedish America Line, sued each other in this
8 Court. The consolidated case was assigned to District Judge
9 Lawrence Walsh, who appointed four special masters to preside
10 over six weeks of depositions in this city, at the conclusion
11 of which the universe of involved marine insurers got together
12 in London and settled the entire case and all third-party
13 plaintiffs. Judge Walsh signed the order closing all the cases
14 before any trial, to the relief of the shipowners and their
15 insurers, and the discomfiture of the entire admiralty bar of
16 this Court. One can never predict when a federal district
17 court will be transformed into an admiralty court by a disaster
18 at sea.

19 Each district court sitting here today is an admiralty
20 judge, or by the spinning of the assignment wheel will become
21 one. We inherit the mantles of Addison Browne and Learned
22 Hand, not through specialized judicial merit or ship-handling
23 skill, but because it is our responsibility. And the
24 responsibility endures. Since there will always be ships
25 carrying passengers and cargoes, there will always be admiralty

1 and maritime cases in this Court. Ships, passengers, and
2 cargoes have changed from those during the Court's earlier
3 days. Ships are larger -- the newest containerships are so
4 long and so broad that they cannot fit in any United States
5 port and can only trade between European and Oriental ports.
6 Cargoes today are carried in containers above deck on
7 containerships, rather than being loaded into and discharged
8 from the holds of smaller vessels by stevedores. Passengers
9 today are more likely to be successful people embarking in
10 comfort from New York on cruise ships, rather than sailing in
11 the straitened circumstances of steerage to New York from
12 Europe, hoping to succeed in a new country.

13 These changes are wrought by the evolving nature of
14 the international shipping industry. The legal problems
15 generated by the complexities of that industry also evolve.
16 Judges of this Court become versed in the mysteries of the
17 traditional maritime remedy of attachment as utilized in an age
18 of electronic transfer of funds; we adjudicate the rights and
19 responsibilities of parties to global maritime contracts of
20 charterparty and the arbitration clauses in them; we draw the
21 sometimes elusive lines of admiralty jurisdiction over
22 commercial disputes; we divine the meaning of incomprehensible
23 policies of marine insurance; and we try a case without a jury
24 if it falls within the admiralty jurisdiction.

25 But whatever changes in industry practice may be

1 reflected in contemporary maritime law, the admiralty judges of
2 today, like their predecessors 225 years ago, will fashion and
3 apply the rule of law to the human consequences when a peril of
4 the sea becomes a reality. The ships of today may be immense
5 and largely automated, but officers and mates still stand
6 watches, on the bridge or in the engine room; the age-old
7 responsibilities of the seaman lookout have not been entirely
8 supplanted by radar. The navigation rules of the road still
9 constitute mankind's effort to avoid or reduce the risk of
10 collision; fire at sea retains its ancient terror; the world's
11 coastlines are alert to the risk of widespread pollution by oil
12 from a stricken tank vessel; marine salvors maintain a watchful
13 presence; loss of or damage to cargo, injury to or death of a
14 crew member or passenger on board a ship remain commonplace
15 occurrences. Admiralty cases will always arise from time to
16 time because, unlike temporal practices that maritime
17 industries may alter, the perils of the sea are eternal.

18 "Protect me, Lord," goes the traditional mariner's prayer, "for
19 Thy sea is so great and my boat is so small." That prayer
20 resonates today, even though some boats are so large they
21 cannot fit into any American port, because, however large or
22 automated a ship may be, the world's oceans, which cover
23 two-thirds of the planet and seem to be covering more each day,
24 are greater still, and their fury, when aroused, is not
25 deterred by human technology. Of necessity, this Court has

1 always been a great admiralty court. It will remain so.

2 I close these remarks with the observation that the
3 eternal nature of perils of the seas and the antiquity of
4 admiralty law combine to explain the object that was produced
5 and paraded at the beginning of this ceremony: the Silver Oar
6 of the Admiralty. This oar was crafted in about 1725 by
7 Charles LeRoux, a noted colonial silversmith. It served as the
8 symbol of authority of the Vice-Admiralty Court of the Province
9 of New York, a colonial court created by the English Governor
10 General in 1678. After the American Revolution the oar passed
11 into private ownership, but it was obtained and presented at
12 this court in 1941 by a group of admiralty lawyers headed by
13 Charles Burlingham.

14 Traditionally, when a judge of the court was sitting
15 in an admiralty case, the marshal or bailiff would precede the
16 judge into the courtroom, bearing a silver oar and waving it
17 over the judge until he was seated. The oar was then placed in
18 a cradle below the judge's bench, where it rested throughout
19 the session of the court. We have not performed that ritual in
20 this Court for many years, but in 1999, Sir David Steel, a
21 judge of the High Court of Admiralty in Great Britain, told our
22 Maritime Law Association, on the occasion of its centenary,
23 that a great silver oar sat in his court whenever he was
24 hearing an admiralty civil action. That oar was made in about
25 1660, following the restoration of the monarchy in the person

1 of King Charles II. There is nothing new about the concept of
2 admiralty law.

3 It is appropriate that this Court's Silver Oar of the
4 Admiralty be displayed during this ceremony, which recalls,
5 among other subjects, this Court's history as an admiralty
6 court. The fife and drum music is stilled. The pageantry is
7 finished. The Oar of the Admiralty lies before us. I invite
8 you to consider the shape and the stillness of the Admiralty
9 Oar: the beauty of its utilitarian simplicity. The oar has
10 never changed. You sit in your ship, grasp the oar's handle,
11 place its blade in the water, pull, and the ship moves through
12 the water: so humankind has been progressing over the waters
13 since the beginning of recorded time. There is something
14 eternal about the oar. It is wholly fitting that this oar is a
15 symbol of the law of the sea, and of this Court, sitting as an
16 admiralty court for these few moments on a November afternoon.

17 For the sea itself is eternally fascinating, and so
18 are ships and those who go down to the sea in ships, who by
19 their daring or distress, courage or cowardice, foresight or
20 foolishness, triumphs or tragedies of navigation, give
21 employment to admiralty judges and lawyers, thereby generating
22 that equally fascinating body of law that we call admiralty.

23 Chief Judge, I have completed my voyage. I am
24 grateful for this opportunity to return to my home port.

25 (Applause)

1 JUDGE HAIGHT: I now pass the silver oar of the
2 admiralty to that distinguished admiralty judge, Judge Duffy.

3 CHIEF JUDGE PRESKA: Thank you.

4 I now call upon a Co-Chair of our Anniversary
5 Celebration, Judge Kevin Castel.

6 Judge Castel.

7 JUDGE CASTEL: Thank you, Chief Judge Preska.

8 There's no snappy phrase in the English language to
9 describe a 225th anniversary, no term like "sesquicentennial"
10 or "platinum jubilee." Not many institutions reach this point.
11 But this Court has celebrated the anniversary of Judge Duane's
12 first session every 25 years, at least since 1939. It's an
13 opportunity for each generation of lawyers and judges -- and
14 the public -- to reflect on the work of this great institution
15 and the people who populate it.

16 Right here in this Court, the loss-of-life claims from
17 the sinking of the *Titanic* were heard. Anna Sofia Sjoblom
18 swore that she awoke after the collision and escaped on one of
19 the last lifeboats to leave the ship's side. A crew member
20 jumped from an upper deck into her lifeboat, with his boots
21 landing on her head, and she lost consciousness. It is here
22 that the claims from the torpedo attack on the *Lusitania* were
23 heard. The evidence was that the ship sank 18 minutes after
24 the attack, resulting in the deaths of 1,195 innocents. It was
25 here that the loss-of-life claims were heard from the fire

1 aboard the *General Slocum* in the East River, in which over a
2 thousand passengers, mostly German immigrant women and
3 children, perished.

4 It is here that Cold War dramas unfolded like the
5 espionage trial of Julius and Ethel Rosenberg and the perjury
6 trial of Alger Hiss. It is here that Judge Woolsey rejected
7 government efforts to halt distribution of James Joyce's
8 *Ulysses*. Random House republished his decision in all future
9 editions of the work. It is here that defamation suits were
10 brought against CBS and *Time Magazine* by General William
11 Westmoreland and Israeli General Ariel Sharon.

12 It is here that two former Attorney Generals of the
13 United States were indicted and tried for crimes while in
14 office -- Harry Daugherty of the Teapot Dome era and John
15 Mitchell of the Watergate era. Juries were unable to reach
16 verdicts in the two trials against Daugherty, and John Mitchell
17 was acquitted. It is here that financial frauds of national
18 dimensions have been prosecuted, among them the cases against
19 Bernie Madoff, Ivan Boesky, Michael Milken. It is here that
20 the East Africa Embassy bombers and other terrorists have been
21 brought to justice, and where many organized crime cases have
22 been successfully prosecuted. Many other trials in this Court,
23 serious in their own right, became fodder for tabloids. You
24 may recall the trials of Bess Meyerson, Imelda Marcos, Leona
25 Helmsley, and Martha Stewart.

1 Presidents have been kind to this Court in their
2 appointments. Chief Judge Preska told you about Judge Duane.
3 He was succeeded by John Laurence, the Judge Advocate General
4 of the Continental Army. Laurence sat on the Military
5 Commission that tried and convicted British officer John André,
6 who had been the spymaster for Benedict Arnold. Laurence left
7 the court upon his election to the United States Senate.

8 The last judge of the District of New York and the
9 first judge of the Southern District of New York was William P.
10 Van Ness. In the practice of dueling, each contestant was
11 permitted one person on the "field of honor," called a
12 "second." And the "second"'s role was to report on acts of
13 bravery or attend to a bloody wound. Van Ness was "second" to
14 Aaron Burr in the fatal duel with Alexander Hamilton. He was
15 convicted for his role and disenfranchised by the State of New
16 York for a time, but that did not prevent his appointment by
17 President Madison. Judge Van Ness was in office 200 years ago
18 this year when there was a division between the Northern and
19 Southern Districts.

20 Great stories have emerged from our history. One will
21 be familiar to anyone who has sat in a law school classroom.
22 In the summer of 1936, President Franklin Roosevelt appointed
23 Samuel Mandelbaum as a judge of this Court. In his early weeks
24 on the bench, Judge Mandelbaum was assigned to criminal cases.
25 And then one morning in October 1936, he was assigned to the

1 civil part. And his very first case out of the wheel was a
2 personal injury action by a man who had lost his arm in an
3 accident. His name was Harry Tompkins. Little did Judge
4 Mandelbaum know that morning that the case would become the
5 occasion for the Supreme Court's pronouncement in *Erie Railroad*
6 *v. Tompkins*, one of the most cited cases in American
7 jurisprudence.

8 This story calls to mind the experience of Judge
9 Murray Gurfein, who, during his first week on the bench, was
10 assigned an application by the government to enjoin *The New*
11 *York Times* from publishing the Pentagon Papers. Judge Gurfein
12 ruled against the government, headed by the President who had
13 just appointed him to the bench, and, after a minor derailment
14 in the Circuit, Judge Gurfein was upheld by the Supreme Court.

15 So three points emerge, at least as far as I'm
16 concerned. The first: it is important that you come to work
17 each day. You never know what will happen when you arrive.
18 Second, each judge, from the day he or she takes the oath of
19 office, is equal in rank to every other. And, third, judges
20 have no role in the cases or issues that come before them.
21 Lawyers decide what cases to bring and what issues to raise.
22 Without a strong, fierce, independent-minded bar, there would
23 be no cases of import or interest in this Court.

24 In the spoken words today you've heard an anecdote or
25 two. But, with the help of many, an inspired idea of Judge

1 Batts has come to life. You will take home with you today a
2 flash drive that contains a wealth of information about this
3 Court, including the biographies of the 132 men and 22 women
4 who have sat on this Court, their cases, and their writings.
5 You will come to learn of judges of this Court who have gone on
6 to be Secretary of War, Solicitor General, Attorney General,
7 and Director of the FBI. You will learn that our beloved
8 former colleague, Justice Sonia Sotomayor, was not the first
9 judge of this Court to ascend to the nation's highest court --
10 Judge Samuel Blatchford has that distinction.

11 We hope that you will appreciate that the glory of
12 this court is not in the personalities or intellects of those
13 who sit on its bench. We are only temporary custodians. It
14 lies in the process handed down to us by generations before of
15 deciding disputes without fear or favor according to the facts
16 and the even-handed application of the rule of law. It is
17 summed up in the oath that each of us, including Judge Duane,
18 has taken over the last 225 years: to "administer justice
19 without respect to persons, and do equal right to the poor and
20 to the rich..."

21 We thank those of you who made this Anniversary
22 Celebration possible, and we hope that all will enjoy and
23 learn. Thank you.

24 (Applause)

25 CHIEF JUDGE PRESKA: Thank you, Judge Castel.

1 The celebration of the 225th Anniversary is not merely
2 a day, but it's a yearlong series of events. And to give you
3 and overview of these events, I call on the Co-Chair of the
4 225th Anniversary Committee, Judge Batts.

5 Judge Batts.

6 JUDGE BATTS: Judge Preska, my thanks to you, the
7 102nd judge of the Southern District of New York and our
8 distinguished chief.

9 Judge Castel and I are very excited about the
10 celebration events planned, starting today, until October,
11 2015. 225 years is a lot of history to celebrate, even if you
12 have a year to do it in, and I will mention a few of the
13 highlights.

14 Today, outside this courtroom, you can see the actual
15 Commission of and transmittal letter to the first Judge of the
16 District of New York, James Duane, signed by President George
17 Washington, along with Judge Duane's portrait.

18 We also have today the commission of the fourth Judge
19 of the District of New York, John Sloss Hobart, signed by
20 President John Adams, along with his portrait.

21 It is interesting to note that the Duane and Hobart
22 commissions are identical to those of judges appointed today.

23 Finally, the 1789 Minute Book, opened to the page of
24 the first session on the first Tuesday of November, November
25 3rd, 1789, is also outside the courtroom.

1 We hope you take the time to visit the extraordinary
2 Exhibit of Courtroom Art by the artists who have contributed
3 their work, in the Thurgood Marshall Courthouse in the main
4 lobby. We will have a reception to honor our sketch artists on
5 January 22nd, 2015, in Thurgood Marshall. The exhibit will be
6 up until May 4th, 2015.

7 We are delighted that the New York County Lawyers'
8 Association will honor our bench on its 225th anniversary at
9 their 100th Annual Dinner on December 17th, 2014, at the
10 Waldorf Astoria Hotel. We are so pleased that both Justices
11 Ruth Bader Ginsberg and Sonia Sotomayor have accepted NYCLA's
12 gracious invitation to attend and will give remarks.

13 Many great jurists have graced the bench of the
14 District of New York and the Southern District of New York.
15 For our 225th celebration, we will be honoring three of them.

16 On March 26, 2015, there will be a panel on Edward
17 Weinfeld, the 37th judge of the Southern District of New York,
18 whose work ethic, legal intelligence, and high expectations
19 from those who practiced before him are legendary.

20 On April 23rd, 2015, the Supreme Court Historical
21 Society and the Historical Society of the City of New York will
22 present a panel on Judge Learned Hand, the ninth judge
23 appointed to the Southern District of New York, who served with
24 distinction on our Court for 15 years.

25 And on September 17, 2015, we will honor former Chief

1 Judge Constance Baker Motley, the 62nd Judge to be appointed to
2 the Southern District of New York, a woman of many firsts as a
3 litigator, politician, and jurist, including first woman and
4 first African-American appointed to our Court.

5 Our celebration will also have the reenactment of
6 famous cases. On January 15th, 2015, the Federal Bar Counsel
7 Inn of Court will present its acclaimed reenactment of the 1971
8 Pentagon Papers case before Judge Murray I. Gurfein, the 65th
9 Judge appointed to the Southern District of New York.

10 As an aside, not only was Judge Gurfein a great judge;
11 he was a good friend. He got the Pentagon Papers case because
12 he had taken over Part 1 duty for his colleague and friend
13 Judge Lawrence W. Pierce, the 66th Judge appointed to the
14 Southern District of New York, for whom I had the distinct
15 honor and pleasure of clerking, along with my esteemed
16 co-clerk, the legendary and inestimable Jo Ann Harris, who
17 passed away last Thursday morning.

18 On February 26th, 2015, The William P. Conner Inn of
19 Court, named for a true patent guru, the Honorable William
20 Curtis Conner, the 76th judge appointed to our bench, will
21 present "American Pin v. National Button, a Patent Trial."

22 And on May 14th, 2015, at our Court in White Plains,
23 will be presented the 1735 trial of John Peter Zenger,
24 journalist and publisher of the New York Weekly *Journal*, who
25 was charged with seditious libel for printing articles critical

1 of the colonial Governor William Cosby.

2 The celebration will conclude on October 19, 2015. We
3 are extremely fortunate to have operatic artists from the
4 Martina Arroyo Foundation perform *The Trial of Don Giovanni*.
5 Ms. Arroyo was awarded a Kennedy Center Honors Award for a
6 lifetime of contributions to American culture, presented to her
7 by our own Justice Sonia Sotomayor in December 2013.

8 In closing, let me say that, in our courthouses, we
9 have constant reminders of our Court's history, from displays
10 of portraits and photographs of former judges and historic
11 documents in our hallways and courtrooms, to inspire us daily.
12 However, this year's celebration of 225 years of existence
13 gives us a marvelous opportunity to reflect on how our bench
14 has grown and diversified, how our laws have changed as we have
15 as a society, and how we have incorporated technology to
16 improve our delivery of justice to those we serve.

17 And to my extremely knowledgeable, tireless, patient,
18 and beloved Co-Chair, Judge P. Kevin Castel, the 126th judge
19 appointed to the Southern District of New York, I wish to offer
20 my heartfelt congratulations today on the actual date of the
21 11th anniversary of his swearing in to our bench.

22 (Applause)

23 CHIEF JUDGE PRESKA: Thank you, Judge Batts. And
24 congratulations, Judge Castel.

25 Ladies and gentlemen, a reception will be held in the

1 Constance Baker Motley Jury Assembly Room on the first floor.
2 And of course you are all invited. As Judge Batts mentioned,
3 on display in the foyer of this courtroom are the oil portraits
4 of the two early judges, their commissions, their letters from
5 President Washington and President Adams and the rest. They
6 will be on display until 7 p.m. tonight. So you are all
7 encouraged to come up and down and to view them if you have the
8 opportunity.

9 On behalf of the Court, I thank all of those who made
10 today's program possible. Many of their names are listed in
11 the program. We thank the National Archives and the New York
12 Historical Society for the historic materials. And we thank
13 the Museum of the City of New York for the return of the Silver
14 Oar.

15 And finally, I would single out Judge Batts and Judge
16 Castel, the co-chairs of this anniversary celebration, and note
17 with thanks Judge Castel's lengthy and successful negotiations
18 with the numerous institutions that hold the historical
19 artifacts. Thank you, Judge Batts and Judge Castel.

20 (Applause)

21 CHIEF JUDGE PRESKA: The purpose for which this
22 special session has been convened having been accomplished, the
23 Clerk of Court will adjourn Court sine die.

24 THE CLERK OF COURT: All rise. The Court is adjourned
25 sine die.

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