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Remarks, Investiture of Hon. Con. G. Cholakis

Roger J. Miner '56

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INVESTITURE OF JUDGE CON. G. CHOLAKIS
ALBANY, NEW YORK
THURSDAY, MAY 29, 1986

REMARKS

I TAKE GREAT PERSONAL PLEASURE IN WELCOMING AN OLD FRIEND INTO THE COMPANY OF FEDERAL JUDGES. I SPEAK NOT ONLY FOR MYSELF BUT FOR ALL MY COLLEAGUES ON THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT IN CONGRATULATING GUS CHOLAKIS ON HIS INVESTITURE. JUDGE CHOLAKIS BECOMES ONLY THE EIGHTEENTH JUDGE TO SERVE IN THIS COURT SINCE THE NORTHERN DISTRICT WAS ESTABLISHED BY CONGRESS 172 YEARS AGO. OF THOSE EIGHTEEN JUDGES, FIVE ARE IN SERVICE TODAY. THIS DISTRICT SHARES EQUALLY WITH THE SOUTHERN DISTRICT OF NEW YORK THE DISTINCTION OF BEING SUCCESSOR TO THE FIRST COURT EVER CONVENED UNDER THE SOVEREIGNTY OF THE UNITED STATES. ALTHOUGH SIX JUDICIAL DISTRICTS IN THREE SEPARATE STATES ARE ENCOMPASSED WITHIN THE SECOND CIRCUIT, AN HISTORIAN HAS WRITTEN THAT THE NORTHERN DISTRICT OF NEW YORK HAS THE MOST EXCITING HISTORY, THE MOST SCENIC LOCATION, THE MOST COLORFUL BENCH AND BAR, AND THE MOST SIGNIFICANT CASES IN THE ENTIRE CIRCUIT.

FROM 1814, WHEN THE DISTRICT WAS CREATED, UNTIL 1927, ONLY ONE JUDGE SERVED IN THE NORTHERN DISTRICT OF NEW YORK. ON MARCH 3, 1927, IN RESPONSE TO AN INCREASING WORKLOAD BROUGHT ON BY PROHIBITION, CONGRESS CREATED A SECOND JUDGESHIP. WHEN HIS COMMISSION WAS SIGNED BY PRESIDENT CALVIN COOLIDGE ON MAY 21,

1927, FREDERICK H. BRYANT OF MALONE BECAME THE FIRST APPOINTEE TO THE SECOND SEAT IN THE NORTHERN DISTRICT. IT WAS THE DAY OF LEGS DIAMOND, BATHTUB GIN, SPEAKEASIES AND BOOTLEG WHISKEY SMUGGLED FROM CANADA. AS MANY AS 200 PEOPLE A DAY WERE ARRAIGNED IN THE NORTHERN DISTRICT ON CHARGES OF PROHIBITION LAW VIOLATIONS AND ILLEGAL ENTRY INTO THE UNITED STATES. NIGHT SESSIONS OF THE COURT WERE NOT UNCOMMON, AND FINES UNDER THE VOLSTEAD ACT APPROACHED A MILLION AND A HALF DOLLARS A YEAR IN THE NORTHERN DISTRICT.

THE MOST CELEBRATED CASES HANDLED BY JUDGE BRYANT DURING HIS CAREER ON THE BENCH WERE THE INCOME TAX EVASION TRIALS OF ARTHUR FLEGENHEIMER, BETTER KNOWN AS DUTCH SCHULTZ, THE PROHIBITION ERA GANGSTER. ALTHOUGH THE EVIDENCE REVEALED THAT THE SCHULTZ OPERATION GROSSED MILLIONS OF UNTAXED DOLLARS EACH YEAR, A TRIAL IN SYRACUSE ENDED IN A HUNG JURY. A RETRIAL WAS ORDERED AT MALONE, WHERE JUDGE BRYANT MAINTAINED CHAMBERS. ACCORDING TO THE LOCAL NEWSPAPERS OF THE DAY, SCHULTZ SPENT THE WEEK BEFORE TRIAL INGRATIATING HIMSELF WITH THE LOCAL CITIZENRY BY SPENDING MONEY LIKE IT WAS GOING OUT OF STYLE. ALTHOUGH THESE ACTIVITIES CAUSED JUDGE BRYANT TO REVOKE BAIL, SCHULTZ WAS ACQUITTED OF ALL CHARGES BY A JURY VERDICT ON AUGUST 1, 1935.

ON RECEIVING THE VERDICT OF NOT GUILTY, JUDGE BRYANT TOLD THE JURORS THAT THEY HAD "RENDERED A BLOW AGAINST LAW ENFORCEMENT AND GIVEN AID AND ENCOURAGEMENT TO THE PEOPLE WHO WOULD FLOUT THE LAW." THE INCIDENT WAS REPORTED IN A BANNER HEADLINE IN THE NEW YORK TIMES THE NEXT DAY AS FOLLOWS: "SCHULTZ IS FREED; JUDGE

EXCORIATES JURY OF FARMERS." OBVIOUSLY, NOT ALL THE JURORS WERE FARMERS, BUT IT IS ALWAYS INTERESTING TO ME THAT NEW YORK CITY FOLKS THINK THAT FARMING IS THE PROPER OCCUPATION OF ALL THOSE WHO RESIDE NORTH OF THE BRONX. LESS THAN THREE MONTHS AFTER HIS ACQUITTAL, DUTCH SCHULTZ WAS SHOT TO DEATH AT A TAVERN IN NEWARK, NEW JERSEY. ACCORDING TO LEGEND, A LAWYER WHO HAD TAKEN ON AN EXCESS OF HIS CLIENT'S BOOTLEG PRODUCT ONCE APPEARED BEFORE JUDGE BRYANT, WHO SAID: "COUNSELLOR, YOU'RE DRUNK." THE LAWYER SUPPOSEDLY RESPONDED: "YOUR HONOR, THAT'S THE FIRST CORRECT JUDGMENT YOU'VE MADE ALL DAY."

WHEN JUDGE BRYANT DIED IN 1945, EDWARD S. KAMPF WAS ELEVATED FROM HIS POSITION AS ALBANY POLICE COURT JUDGE TO SUCCEED HIM. JUDGE KAMPF RESIGNED AFTER SERVING FOR ONLY TWO YEARS. HE IS REPORTED TO HAVE FOUND THE WORK SOMEWHAT DIFFERENT FROM THAT OF A POLICE COURT JUDGE. IN 1949, PRESIDENT HARRY S. TRUMAN, A GREAT PRESIDENT, APPOINTED THE FIRST RENSSELAER COUNTY MAN EVER TO SERVE IN THE NORTHERN DISTRICT. JAMES THOMAS FOLEY WAS ONLY THIRTY-EIGHT YEARS OF AGE WHEN HE SUCCEEDED TO THE SECOND SEAT IN THE NORTHERN DISTRICT. HE IS THE SENIOR SENIOR JUDGE IN THE CIRCUIT AND THE FINEST JUDGE ANYWHERE. HIS WISDOM AND COMPASSION ARE WELL-KNOWN TO EVERYONE HERE. HE IS EVERYTHING A JUDGE SHOULD BE AND A GREAT MODEL FOR ALL OF US. (GUS, I URGE YOU TO LISTEN CLOSELY TO EVERYTHING JIM FOLEY HAS TO SAY, EXCEPT WHEN HE PREDICTS THE OUTCOME OF A HORSERACE.) THERE HAVE BEEN MASSIVE CHANGES IN THE WORK OF THE FEDERAL COURTS DURING JUDGE FOLEY'S TENURE, AND HE WAS AT THE CUTTING EDGE OF MANY OF THOSE CHANGES.

HIS EFFORTS AS CHIEF JUDGE LED TO THE ESTABLISHMENT OF A THIRD SEAT ON THIS COURT IN 1978, A SEAT HELD SINCE ITS CREATION BY NEAL McCURN. THE FOURTH SEAT, ESTABLISHED IN 1984, RECENTLY WAS FILLED WITH THE APPOINTMENT OF TOM McAVOY.

WHEN JUDGE FOLEY TOOK SENIOR STATUS, I SUCCEEDED TO THAT SECOND SEAT AND TODAY JUDGE CHOLAKIS CLAIMS THAT SEAT FOR RENSSELAER COUNTY FOR THE SECOND TIME IN HISTORY. I KNOW HE WILL FILL THE POSITION WITH GREAT DISTINCTION, AND I NOW WELCOME HIM TO THE WONDERFUL WORLD OF PATENTS AND TRADEMARKS, ANTITRUST LAW, THE INTERNAL REVENUE CODE, THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT, ANCILLARY AND PENDENT JURISDICTION, DIVERSITY CLAIMS, BANKRUPTCY APPEALS, MILLER ACT CASES, FEDERAL TORT CLAIMS, EMPLOYMENT DISCRIMINATION, CIVIL RIGHTS AND THE SECURITIES EXCHANGE ACT OF 1934, TO NAME JUST A VERY FEW. WITH THE CASELOAD DOWN TO ABOUT 500 OF THESE CASES PER JUDGE, IT'S JUST A QUESTION OF WHERE HE'LL SPEND HIS LEISURE TIME.

I AM CONFIDENT THAT JUDGE CHOLAKIS WILL BE AN EXCELLENT FEDERAL JUDGE, JUST AS HE WAS AN EXCELLENT STATE JUDGE. THEY SAY IN OUR LINE OF WORK THAT THE RESPECT OF YOUR PEERS IS THE HIGHEST COMPLIMENT, AND HE HAS THAT RESPECT IN ABUNDANCE. I CONGRATULATE HIM AND EXTEND MY BEST WISHES TO HIS FAMILY AND MANY FRIENDS ON THIS HAPPY OCCASION.