



## Provocative, Human, Eclectic

### *In This Issue:*

**From the President** ..... 2  
Council President Frank H. Wohl discusses the state of the judiciary in the Second Circuit, and the continuing problem of judicial compensation.

**From the Editor** ..... 5  
A phone call about an article she wrote over a decade ago leads Bennette Kramer to reflect on Judge John L. McBryde of the Northern District of Texas, as well as the power of the Internet.

**Judge Gardephe in Iraq** ..... 7  
Southern District Judge Paul G. Gardephe had an interesting experience, to say the least, when he was asked to represent Bilal Hussein, an AP Pulitzer Prize-winning photojournalist who had been detained by the U.S. military in Iraq. Steven M. Edwards and Collin J. Peng-Sue write about Judge Gardephe’s “Mission in Baghdad.”

**Second Circuit Judge Raymond Lohier, Jr.** ..... 12  
Robin Nunn recently spoke with Second Circuit Judge Raymond Lohier, Jr., who had been confirmed by the U.S. Senate by a vote of 92-0 for a seat on the circuit court and who had been sworn in earlier this year.

**Focus On: Second Circuit Judge Gerald Lynch** ..... 14  
Then, Lisa Fried and Pete Eikenberry report on their conversations with Second Circuit Judge Gerard E. Lynch, who is two years into his tenure on the Second Circuit after having served in the District Court for the Southern District.

**In the Courts: District Court Judge Vincent L. Briccetti** ..... 15  
U.S. District Court Judge Vincent L. Briccetti is the subject of our next article, by Russell Yankwitt.

**And More** .....  
Who really wrote Shakespeare’s plays is the subject of much media attention now. But Ronald W. Meister asks a different question in his article (p. 17): who wrote Cardozo’s opinions? Evan Stewart gets into Abraham Lincoln’s speech at Cooper Union (p. 20), and Pete Eikenberry intrigues us with some more personal history and reflections (p. 26).

Lynch to consider, “What if I’m wrong?” As a district court judge, he observed, you do not have the check of two other judges on you, which can and does give rise to “a direct challenge to your thinking that you have to take very seriously.” On balance, Judge Lynch is convinced that “three heads are better than one. It is quite common that one of my colleagues sees something that I did not see.” He recalled that, at the trial court level, “there is often a lot of initially figuring out what the issue is.” At the appellate level, the issues tend to get posed in a clearer and more refined fashion. In the district court, “there is only one shooting position, from the hip.” At the appellate level, there is more time to reflect.

Judge Lynch still is struck by how often decisions come down to “a matter of judgment.” He notes that that is the case because the law often poses questions such as, “What is reasonable?” Judges are able to refer to precedents that are benchmarks, but the precedents rarely dictate a “clean,” mechanically-reached outcome. Much of the law falls into this category, in Judge Lynch’s view. What judges do “doesn’t always involve major clashes of principle. More often, precedents can be read one way or another,” and he and his colleagues are required to exercise judgment because neither potential outcome can be ruled out altogether. “There are an awful lot of cases that are difficult to decide,” he said. “The cases that are easy get decided in your office.”

As somebody who tends

to focus intensely on the matter at hand but not necessarily recall in encyclopedic detail cases over which he presided in the past, Judge Lynch says that one of his biggest challenges is effectively preparing for the weeks when he is sitting at the court of appeals. Ideally he will receive the briefs for a week’s worth of appeals – 30 cases – six weeks before oral argument. Striking a balance is difficult: “You cannot let the reading drift until the last minute and need to start early, but you will have read a fifth of the cases five weeks ago.” Judge Lynch said he prepares for oral argument in two or three phases. He initially reads the briefs and then convenes a series of sessions a week before the sitting with his law clerks. He prepares again the night before oral argument. Overall, he has found the work to be “great fun.”

Judge Lynch does, however, miss the rhythms and relationships of life in the district court. As a trial judge, he had the opportunity to develop relationships and have daily interactions with counsel, other court employees and potential jurors. During the many pockets of downtime that punctuated the multiple matters over which he presided each day, he had an opportunity to “schmooze – one of the things I love about the courthouse culture” – which is less common in the more formal environment at the court of appeals. Judge Lynch misses the day-to-day contact he had with those who came through his courtroom. He recalls “meeting people from all

walks of life, people I otherwise would have seen but not necessarily engaged with.”

Although “just keeping up with Second Circuit slip opinions is a significant job,” Judge Lynch manages to indulge what he describes as his eclectic taste in pleasure reading. Over the summer, he enjoyed David Foster Wallace’s *Infinite Jest* on his Kindle.

Summing up the ways in which his current mission differs from the one he had in the district court, Judge Lynch observed that, as an appellate judge, “you are there not to solve the case; you are there to answer the question.” As somebody who by his own admission “like[s] people to give me an assignment, to bring me a problem,” Judge Lynch appears to be enjoying his latest role very much.

## **In the Courts**

### **District Court Judge Vincent L. Briccetti**

**By Russell Yankwitt**

On November 17, 2010, President Obama nominated Vincent L. Briccetti to the seat on the U.S. District Court for the Southern District of New York vacated by Judge Kimba Wood, who had taken senior status. Judge Briccetti received a rating of “Unanimously Well Qualified” from the American Bar Association, and was confirmed by unanimous consent on April 12, 2011. Judge Briccetti has the privilege and

pleasure of sitting in the White Plains courthouse.

### **Background**

Born and raised in Mt. Kisco, Judge Briccetti is a graduate of Columbia University and Fordham Law School. At Fordham, he was Articles Editor of the Law Review. Upon graduation, he served as a law clerk to the Honorable John M. Cannella, U.S. District Judge for the Southern District of New York. With the exception of college and law school, Judge Briccetti has lived in Westchester his entire life.

After two years in private practice, Judge Briccetti served as an Assistant U.S. Attorney in the Southern District of New York from 1985 to 1989. During his nearly five years as a federal prosecutor, he investigated hundreds of cases and tried approximately 25. Judge Briccetti comments that during those years he felt as if he was working for the best law firm in America. He regularly reflects on the joy and excitement of working with those extraordinary lawyers and people. Before leaving the office, he was promoted to Deputy Chief Appellate Attorney. During his last trial for the government, his co-counsel was a newly-minted Assistant U.S. Attorney, Stephen C. Robinson, who recently joined Skadden, Arps, Slate, Meagher & Flom, in New York City, after serving for seven years as a district judge in White Plains.

In 1989, Judge Briccetti returned to private practice, at the

firm of Paul Hastings. In 1992, he formed his own firm in White Plains, most recently known as Briccetti, Calhoun & Lawrence, which became a well-known criminal defense firm. He also tried civil cases and argued numerous appeals. During his illustrious career as a trial lawyer, Judge Briccetti handled cases charging mail, wire, tax and bank fraud, as well as public corruption, embezzlement, criminal antitrust, identity theft and narcotics trafficking.

In addition, Judge Briccetti served for 18 years as a member of the Criminal Justice Act panel in White Plains, handling numerous cases as court-appointed counsel for indigent criminal defendants. He is perhaps best known for his representation of an alleged terrorist in a difficult and highly publicized case, while simultaneously negotiating the confirmation process.

Judge Briccetti also was active in civic affairs and bar associations. He is very likely the only federal judge in the nation who spent 10 years as the commissioner of a local water board. He also served as a member of the Board of Directors of the Federal Defenders of New York from its inception until his appointment to the bench.

### **Lessons Learned**

Judge Briccetti fondly recalls his days clerking for Judge Cannella. Now, as a federal judge himself, he often thinks about the lessons he learned in

those two years. Judge Briccetti took to heart Judge Cannella's oft-repeated remark that for the litigants involved, their case is the single most important thing in their lives. This lesson, learned more than 30 years ago, has been Judge Briccetti's guiding principle as a prosecutor and private practitioner and now as a judge. Of course, some cases take more time than others, and some might be of greater public interest, but Judge Briccetti affords every case and every litigant the same careful thought and attention. As a judge, he recognizes that every litigant must feel his or her case is being taken seriously and being given a fair hearing. In fond remembrance of his former mentor, Judge Briccetti had the desk he once used as a law clerk transported to his chambers.

Judge Briccetti also has incorporated into his judicial philosophy lessons learned from private practice. He understands the pressures and demands of working at small firms, which he takes into account when setting deadlines and deciding whether to grant extensions or adjournments. He is sensitive to the needs of the typical "working stiff" lawyer and says: "I was one of them for 20 years – I am acutely aware of their needs." In six months on the bench, he has garnered a reputation for being reasonable, compassionate and fair to plaintiffs and defendants alike. At the same time, he is determined that every case be resolved as expeditiously and inexpensively as possible.

Judge Briccetti has proven

Senator Charles Schumer correct: “Vincent Briccetti has had a varied and distinguished career in the law and public service on behalf of the people of New York and the nation. He is universally respected by his peers in the legal community due to his sharp mind and exemplary professionalism. His outstanding leadership, his intellect, his commitment to justice, his deep connections to New York and his extensive experience make him an exceptional choice as a federal judge in the Southern District.”

**Judge Briccetti affords every case and every litigant the same careful thought and attention.**

### The White Plains Courthouse

During the nomination process, Judge Briccetti said that if he were fortunate enough to be confirmed, he hoped to be assigned to the White Plains courthouse. In addition to being born in Westchester and having practiced law in White Plains for almost 20 years, Judge Briccetti always enjoyed appearing before the White Plains federal judges. Judge Briccetti comments that his cases are every bit as sophisticated and challenging as cases at the courthouse in Manhattan, and that he enjoys working in a

place where even before his appointment he knew the names of the marshals, court security officers, courthouse staff and many of the lawyers who now appear before him on a regular basis. In contrast to the sister courthouse at 500 Pearl Street, where judges might be surprised when they see the same lawyer twice, the judges in White Plains are surprised when they do not.

Judge Briccetti adds that one of the great things about working in White Plains is the extraordinary contributions of the three magistrate judges who each carry a heavy caseload, try many cases a year on consent and most importantly are wonderful people with whom to work. Friday lunches with the three district judges, three magistrate judges and one bankruptcy judge are always a highlight of his week. Judge Briccetti expresses special gratitude to his colleagues, Judges Kenneth M. Karas and Cathy Seibel; he regularly sought their counsel when he started as a judge and continues to do so.

### Personal Time

In his personal time, Judge Briccetti is an avid golfer and enjoys baseball and Italian opera. He has been married for 33 years and is the proud father of three children – a hard-working young attorney in Manhattan, a recently returned Peace Corps volunteer, and a college senior. Judge Briccetti is ready and eager to take on the challenges of his position.

### From the Courts?

## Backward Ran The Sentences – ’til 1600

By Ronald W. Meister

The release of Roland Emmerich’s film *Anonymous*, and the recent publication of Arthur Phillips’s *The Tragedy of Arthur*, have renewed the debate over who wrote Shakespeare’s plays. Scholars have long puzzled over how the unlettered son of an undistinguished Midlands glove-maker could write poetry of such beauty. From Mark Twain’s conclusion that the plays were written not by Shakespeare, but by someone else with the same name, to Emmerich’s claim for the Earl of Oxford, many candidates have been put forth as the Bard, his collaborator, his literary agent, or his alter ego.

It seems, however, that we are looking at this problem from the wrong end of the telescope. Whoever wrote the plays, they are undoubtedly among the highest achievements of the English language. What we should be looking for is not who wrote Shakespeare’s plays, but what else Shakespeare wrote: what other writings are so good, and bear the unmistakable influence of the Bard, that they should be attributed to him, and not to their ostensible authors?

Lawyers, with their tradition of persuasive writing, have a special stake in this issue. We harbor little doubt over the identity of the greatest legal stylist of mod-