



Newsletter of the Historical Society of the District of Columbia Circuit

#56 ~ July 2023 ~ www.dcchs.org



U.S. v. Microsoft Corp. Revisited

On June 7, 2023, the Society presented its first in-person historical program in four years, on the Court of Appeals' 2001 decision in *United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001). The Court of Appeals' 2001 opinion was the first federal major appellate court opinion to address application of traditional "old economy" antitrust rules to the new, dynamic and fast-paced technology markets of the late 20th Century. This was the Society's twenty-fourth program, and the second program in the Judge Patricia M. Wald Programs on Life and Law in the Courts of the D.C. Circuit. Over 175 individuals attended the Program.

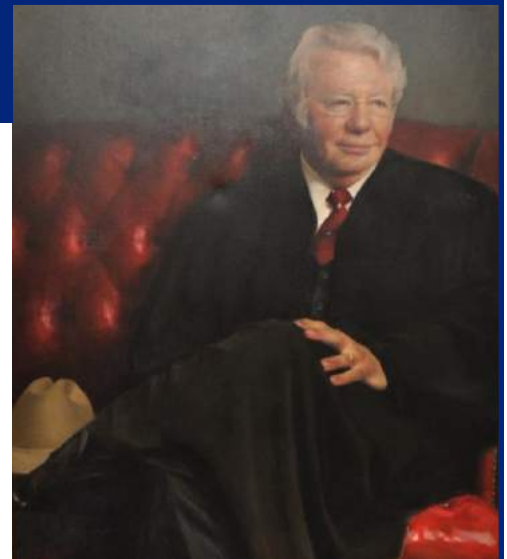
MICROSOFT - continued on page 3

Judge Sentelle Honored for 36 Years on the D.C. Circuit

by Shannen W. Coffin (law clerk to Judge David Sentelle, 1994-95)

Judicial colleagues, families and friends gathered in the D.C. Circuit's ceremonial courtroom on June 9, 2023, to honor the tenure and legacy of The Honorable David B. Sentelle, who will retire at the end of this term. In addition to the judges of the Court of Appeals, honored guests included Justice and Mrs. Clarence Thomas, Justice Brett Kavanaugh and Justice Neil Gorsuch, as well as Attorney General and former Chief Judge Merrick Garland, and several judges of the U.S. District Court, D.C. Court of Appeals and D.C. Superior Court. Judge Sentelle's wife Jane and three daughters, Sharon, Reagan, and Rebecca, and numerous grandchildren and family members attended. Dozens of Judge Sentelle's former law clerks were also in attendance.

SENTELLE - continued on page 4



Page 1 -

U.S. v. Microsoft Corp. Revisited
Judge Sentelle Honored
Attention Law Clerks

Page 2 -

Two New Oral Histories Published on The Society's Website: Irwin Goldbloom & William B. Schultz

Page 3 -

In Memoriam for Judge Kessler

Page 4 -

Welcome New Board Members

Attention Law Clerks

Are you a current or former judicial law clerk for a Judge serving on any of the courts of the District of Columbia Circuit?

We are looking for you! The Historical Society would like to invite you to special events for current and former law clerks, such as the Society's Annual Law Clerks Fall reception. After a four-year hiatus, we hope to have this event again in 2023. We would love for you to be a part of it.

Please send contact information where we can reach you to info@dcchs.org.

Two New Oral Histories Published on the Society's Website:

Irwin Goldbloom (taken by Elizabeth Sarah Gere)



Irwin Goldbloom was born and raised in Syracuse, New York. He was the first in his family to attend college, but his education was interrupted when he was drafted to serve in the U.S. Army in Korea. After his service he returned home to finish college and attend law school. An offer to join the Department of Justice in 1958 led him to Washington, D.C. Thus began an extraordinary legal career in government service for two decades followed by almost two more decades in private practice.

In his [oral history](#), Mr. Goldbloom describes the many and varied cases he litigated while in the Civil Division of the DOJ. The cases ranged from matters making front page news to those producing enduring legal principles still relied on by courts decades later. The subject matters included national security, Executive Privilege, administrative law, FOIA, copyright, and defense of a myriad of government programs and officials.

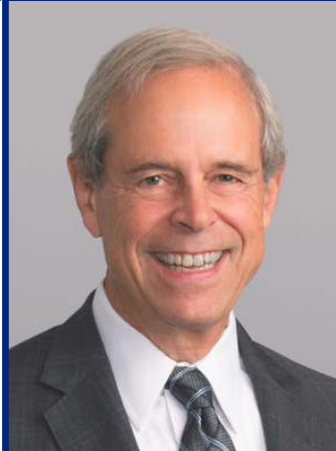
Mr. Goldbloom recounts the excitement and energy of working for Attorney General Robert F. Kennedy and reminisces about his service with numerous administrations and Attorneys General as they changed over the years. In addition, he has vivid recollections of appearing before many of the judges for the United States District Court for the District of Columbia and the United States Court of Appeals for the D.C. Circuit. Among the outstanding judges described in his oral history are District Judges [Hogan](#), [Smith](#), [Jones](#), [Corcoran](#), and [Gasch](#), as well as appellate judges [Leventhal](#), [Wright](#), [Robinson](#), and [Ruth Bader Ginsburg](#).

In 1978, Mr. Goldbloom helped open the Washington office of Latham & Watkins, where he retired in 1994. With his contributions, Latham & Watkins grew quickly in Washington to become a major presence in the local legal community.

Mr. Goldbloom's oral history shows how his own early life experiences, education and military service produced a true leader in the profession, a lawyer's lawyer. The legal profession has benefited from his long and distinguished service.

Do you have an idea
for an article you'd like to share?
Let us know: info@dcchs.org

William B. Schultz (taken by Stephen J. Pollak)



William ("Bill") Schultz was born in Bloomington, Indiana, but his family soon moved to Washington D.C. He can be described as a "triple-threat," excelling as a non-profit advocate in Ralph Nader's Public Citizen Litigation Group; serving at high levels in the Executive and Legislative Branches (Department of Health and Human Services, Department of Justice, Food and Drug Administration and

Henry Waxman's House Subcommittee on Health and the Environment); and as a practicing health law partner at Zuckerman Spaeder.

Mr. Schultz describes attending Yale College as an undergraduate during a "stressful time":

There was a demonstration against the invasion of Cambodia... At the same time, the trial of Bobby Seale, a Black Panther accused of murdering a colleague, was scheduled in New Haven. So, debates about the Viet Nam War were mixed in with debates about whether Bobby Seale could get a fair trial as a Black man...

After graduation from the University of Virginia Law School, Mr. Schultz clerked for U.S. District Judge [William B. Bryant](#) and provides an intimate portrait of this "spectacular judge."

In January 1976, Mr. Schultz began a 14-year stint as a litigating attorney in Ralph Nader's Public Citizen Litigation Group and noted that Nader "started modern-day public interest law and figured out that the public interest lawyer's role wasn't just litigating but also lobbying, working with the press, and so on."

In 1990, Mr. Schultz moved to the House Subcommittee on Health and the Environment, which had broad jurisdiction over the Food and Drug Administration, Medicare, the Centers for Disease Control and Prevention, and the Environmental Protection Agency.

When asked to describe his most important contribution during his time in government, Mr. Schultz said:

One would have to be tobacco... We ended up getting legislation that set up a tobacco program at FDA that ... will control the kinds of claims that can be made on tobacco as to whether a product is safe or whether it is beneficial in some way... Second would have to be the Affordable Care Act, which is so important to healthcare and which I had a role in implementing and defending. I think that the Nutrition Labeling Act is somewhere up there. It's hard to believe but, but, 30 years ago when

SCHULTZ - continued on page 4

In Memorium For Judge Kessler



On May 19, 2023, the Court held a memorial service for Judge Gladys Kessler, who passed away on March 16, 2023. Judge Kessler served on the U.S. District Court for the District of Columbia for 23 years until her retirement in 2017. Previously, Judge Kessler served for 17 years as a judge for the Superior Court of the District of Columbia. Judge Kessler is credited with reforming the District of Columbia foster care system. She also ruled in landmark federal cases related to tobacco companies, the Affordable Care Act, terrorism, and the treatment of detainees at Guantánamo Bay. She co-founded the Women's Legal Defense fund, served as president of the National Association of Women Judges, and served as chair of the D.C. Commission on Judicial Disabilities and Tenure.

Former Chief Judge Beryl Howell referred to Judge Kessler as a pioneer in the women's movement, a compassionate and brilliant jurist, a wise mentor to her colleagues, and a good friend. Judge Kessler completed her oral history as part of the ABA Women Trailblazers project, which will be added to the Historical Society's online oral history archives in five years, when no longer under seal.

MICROSOFT - continued from page 1

The historical context for the 2001 decision was set by Douglas Melamed, currently Scholar in Residence at Stanford Law School, who was a principal author and the final editor of the Justice Department's briefs. Doug discussed the challenges posed by Microsoft's meteoric growth in the technology marketplace, and the Justice Department's concerns that Microsoft's business practices crossed the line of antitrust law, which led to the filing of the case.

Judge Douglas Ginsburg and Judge David Tatel, who were members of the *en banc* court in 2001, then presided over a reenactment of a portion of the argument. The arguments were expertly presented by Kristen Limarzi, a partner at Gibson, Dunn, and David Gelfand, currently at Cleary Gottlieb and a professor at Arizona State Law School. The high level of advocacy and a "hot bench" provided a lively reenactment.

Please Support The Society

Programs of the Society depend on the financial support of the Courts of the District of Columbia Circuit, individuals, and law firms.

Consider becoming a member.

See our Membership Brochure at:

dcchs.org/join

Online contributions to the Historical Society can be made at:

dcchs.org/donate

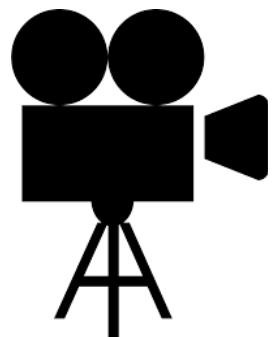
or mailed to:

The Historical Society of the District of Columbia Circuit
E. Barrett Prettyman United States Courthouse
333 Constitution Avenue, NW, Room 4714
Washington, DC 20001-2866

The Historical Society of the District of Columbia Circuit is registered as a 501(c)(3) nonprofit organization independent of the Courts. Contributions to the Society are tax deductible.

The Program concluded with a panel discussion, superbly moderated by Bill Baer, former Director of the Bureau of Competition at the Federal Trade Commission, and former Assistant Attorney General of the Antitrust Division at the Department of Justice. Judges Ginsburg and Tatel reflected on the dynamic within the Court of Appeals that led to several extraordinary steps: the decision to take the appeal *en banc* at the outset, the decision to issue the lengthy decision *per curiam*, with each of the seven participating judges responsible for a section of the opinion, and the collegiality among the judges that allowed them to issue a unanimous and historic opinion. Doug Melamed discussed the government's overall strategy, while David Frederick, who in 2001 was an Assistant to the Solicitor General and one of the two government attorneys to present the argument on behalf of the United States, reflected on the unique challenges and pressures of presenting the government's argument over the two-day argument period. Maureen Ohlhausen, currently at Baker Botts and formerly the Acting Chairman and Commissioner of the Federal Trade Commission, provided perceptive insights on the impact of the decision on antitrust enforcement over the past 20 years.

A full video recording of the Program by the Federal Judicial Center will be on the Society's website soon.



Chief Judge Sri Srinivasan opened the ceremony by recognizing Judge Sentelle's nearly 36 years of service on the D.C. Circuit, including his five year tenure as Chief Judge (2008-2013). Chief Judge Srinivasan also noted Judge Sentelle's numerous special assignments within the judiciary during his tenure on the D.C. Circuit, including serving as Presiding Judge of the Special Division for the Purpose of Appointing Independent Counsels and Chair of the U.S. Judicial Conference's Executive Committee.

Judge Patricia Millett spoke of Judge Sentelle's "larger than life personality," his "great big heart" and "immeasurable wisdom." She spoke about the characteristics that make Judge Sentelle such a special colleague and person – that he is a "genuinely caring person" who cares about people and cares about getting the law right; that he is wise, an "exceptional legal mind" packaged with extraordinary wisdom and judgment; and that he is "one of a kind." Judge Millett spoke of Judge Sentelle's gift for storytelling and his wit, as when he recently told an arguing counsel who was rushing through an argument "Counsel, you have to slow down. I don't hear that fast."

Judge Sentelle's longtime colleague and friend Judge Royce Lamberth noted, among many other things, that Judge Sentelle dined every day with his judicial colleagues from the District Court. He said that Judge Sentelle was a perfect example of "how you can disagree without being disagreeable."

Judge Sentelle was also honored by tributes from two former law clerks. Angela Miller (2001-02 law clerk), an appellate lawyer in the Department of Justice Civil Rights Division, offered touching personal recollections, and important life and career lessons she learned from Judge Sentelle, as when he explained to her after a difficult judicial decision that all that he and other judges "had the power to do was what was right under the law, and sometimes correct legal decisions don't feel right."

Justice Gorsuch (1991-92 law clerk) counted Judge Sentelle as a friend and mentor for over 30 years. "Now is the season to harvest and celebrate." He noted that Judge Sentelle brought cowboy hats and boots to the D.C. Circuit, along with a wisdom from outside the beltway. His ego, Justice Gorsuch observed, always took a back seat to getting it right. Judge Sentelle, he noted, never took himself too seriously, and would gladly belt out the lyrics to any country song if you gave him a chance.

Judge Sentelle closed the ceremony thanking his colleagues, his late parents and his wife, Jane, family and friends and reflecting humbly on a career in serving the public.

you bought food, there was no labeling and no way to know how many calories were in it or how much salt.

Mr. Schultz returned to Zuckerman Spaeder LLP in 2016 where he currently practices. In addition to his outstanding career, Mr. Schultz has served for many years as a Board member, for a period as Treasurer, of the Historical Society.

You can read Mr. Schultz's full oral history on the Society's website [here](#).

Welcome to Our New Board Members

On May 3, 2022, at the Annual Meeting of the Board of Directors, the Historical Society welcomed eight new Board members: Chief Judge James E. Boasberg (U.S. District Court for the District of Columbia), Alex J. Bourelly (Baker Botts LLP), Judge Andrea Hertzfeld (Superior Court of the District of Columbia), Judge Colleen Kollar-Kotelly (U.S. District Court for the District of Columbia), Joseph R. Palmore (Morrison & Foerster LLP), Marlon Q. Paz (Latham & Watkins LLP), Laura Possessky (Corporation for Public Broadcasting), and Charles J. Sheehan (Retired, formerly U.S. Environmental Protection Agency Office of Inspector General). The Board also recognized former Chief Judge Beryl Howell and Stephen J. Pollak for their years of support for and dedicated service to the Society. The Society is proud to have such talented individuals ready and willing to join its leadership and participate in ongoing activities.



Learn more about the Society's committees and how you can serve too on [our website](#).

Find us on social media!



Facebook



Instagram



Twitter



YouTube