

Historical Snapshot: David Brearley, the District Court of New Jersey's First Judge

by John D. Haggerty

Before he was appointed by George Washington to serve as the first federal judge for the District of New Jersey, David Brearley had already cemented his legacy as a distinguished jurist and influential political figure. By the age of 35, Brearley had served as a lieutenant colonel in the Continental Army and been appointed chief justice of the Supreme Court of New Jersey, where he became the first American judge to declare a law unconstitutional. At age 42, Brearley was selected to serve as one of New Jersey's delegates to the Constitutional Convention, where he chaired a committee responsible for defining much of the executive branch as we know it. Brearley's historic career, including his service as the district's first judge, is highlighted below.

Brearley was born on June 11, 1745, in Spring Grove, just outside of Trenton.¹ When he was just two years old, his father was jailed for high treason for his role in land riots against New Jersey's royal proprietors.² Brearley developed an interest in the law early in his life, and became the first in his family to pursue a career beyond farming and landowning.³ He studied law at Princeton, and was admitted to the bar in 1767.⁴ That same year, he opened a practice in present-day Allentown.⁵

With the outbreak of the American Revolution in 1775, Brearley was forced to put his burgeoning legal career on hold. Brearley served as a lieutenant colonel in the Continental Army for three years, seeing action in Brandywine, Germantown, and Monmouth.⁶

In 1779, Brearley was appointed to serve as chief justice of the Supreme Court of New Jersey.⁷ During his first year on the bench, Brearley became the first judge in the newly formed nation to declare a law unconstitutional, in the case of *Holmes v. Walton*, setting a

precedent for judicial review over 20 years before Chief Justice John Marshall's decision in *Marbury v. Madison*.⁸ Among other notable accomplishments during his 10-year tenure on New Jersey's high court, Brearley also penned the first state court ruling affirming the constitutional right of a trial by jury.⁹

In 1787, Brearley was selected to serve as one of just three New Jersey delegates to the Constitutional Convention.¹⁰ He is best remembered for his role as chair of the Committee on Postponed Matters, which was formed to settle critical issues at a time when the convention was on the brink of collapse.¹¹ Brearley's committee put forward proposals that would ultimately define, among other things, many of the powers and duties of the president; establish the vice presidency; and create the electoral college.¹² After signing the Constitution, Brearley served as a delegate to the state ratification convention and headed New Jersey's delegation to the electoral college.¹³

On Sept. 25, 1789, just one day after enactment of the Judiciary Act of 1789, George Washington nominated Brearley to serve as New Jersey's first federal district court judge.¹⁴ Brearley was confirmed by the Senate that same day, and presided over the first session of the District of New Jersey on Dec. 22, 1789.¹⁵ Less than two weeks after deciding his first case, Brearley died, on Aug. 16, 1790.¹⁶ Although his service on the federal bench was short, his contributions to the American Judiciary and political system live on. ■

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Endnotes

1. David Scarinci, *David Brearley and the Making of the United States Constitution* 31 (New Jersey Heritage Press) (2005).
2. *Id.* at 35-36.
3. *Id.* at 45.
4. *Id.* Although many secondary sources indicate that Brearley attended the College of New Jersey (now Princeton University), there are no records to confirm that he was ever a student there. *Id.* at 44.
5. *Id.* at 50.
6. *Id.* at 83-86, 95-97.
7. *Id.* at 105.
8. *Id.* at 111.
9. *Id.* at 113.
10. *Id.* at 136-37.
11. *Id.* at 193.
12. *Id.* at 208.
13. *Id.* at 238.
14. Federal Judicial Center, History of the Federal Judiciary, Biographical Directory of Federal Judges, David Brearley, available at <http://www.fjc.gov/servlet/nGetInfo?jid=246&cid=999&ctype=na&instate=na>.
15. *Id.*; Scarinci, *supra* note 1 at 245.
16. Scarinci, *supra* note 1 at 245.