

ANNUAL LECTURE*

**Sponsored by the Federal Bar Council and the Second Circuit Historical Committee
The United States District Court
for the Northern District of New York -Its History and Antecedents
Hon. Roger J. Miner** United States District Judge
United States Courthouse Foley Square, New York, N.Y. April 10, 1984**

I am pleased to contribute yet another link in the chain of the history of the Courts of the Second Circuit being forged by the Federal Bar Council and the Second Circuit Historical Committee. On behalf of the United States District Court for the Northern District of New York, the eldest child of the "Mother Court," I assert claims not only to the most exciting history, but also to the most scenic location, the most colorful bench and bar, and the most significant cases in the Second Circuit. This use of chauvinistic hyperbole traditionally has been associated with the Southern District. Be assured, however, that my claims will be proved to your satisfaction before I have concluded.

Although the Northern District has a glorious past, its future now is uncertain. Created by Congress in 1814, it appears that its dissolution may have begun in 1983 with our Circuit Court's decision in Oneida Indian Nation v. County of Oneida.¹ According to some interpretations, the holding in that case portends the return of most of the thirty-two counties constituting the Northern District to the native Americans who originally inhabited them. The consequences of the decision are far reaching, and rumor has it that our Chief Judge already has opened negotiations with the chiefs of the Iroquois Nations regarding our employment in the Tribal Courts. Therefore, it is with a great deal of reservation (so to speak) that I recount the history of our Court. My narrative of past events will focus not only on the Court and the men who did its work, but also upon its historical antecedents and its geographical setting.

* The Federal Bar Council collaborates with the Second Circuit Historical Committee in sponsoring a series of annual lectures concerning the history of the Courts of the Second Circuit. The 1981 lecturer covering the history of the United States District Court for the Southern District of New York, was given by Judge Edward Weinfeld. In 1982, Judge Eugene H. Nickerson presented the history of the Eastern District of New York and, in 1983, Judge Jose A. Cabranes delivered a lecture on the history of the District of Connecticut. All three lectures were arranged to coincide with historical exhibits co-sponsored by the Committee and the Council.

** This project could not have been completed without the research assistance of my wife, Jacqueline A. Miner, B.A., M.A. (History), who introduced me to the arcane science of historiography. Because of her expertise (and availability), no other collaborator was necessary, and I am most grateful for her many contributions and suggestions.

Mindful of time constraints, I shall begin our story about one and one-half million years ago, at the beginning of the Pleistocene Epoch of the quaternary period of earth history, a relatively recent interval in geologic evolution. During that Epoch, great masses of ice covered our continent.² As these massive glaciers moved from north to south in the area now known as New York State, they left in their wake the deep rivers, clear lakes, magnificent mountains, rolling hills, lush valleys, and verdant meadows that make up the beautiful landscape of Northern New York. Unfortunately, by the time the glaciers reached their southern terminus near New York City, they were worn out and able only to polish the existing bedrock and scatter some debris carried down from the north.³

As the ice age receded and animal life and vegetation reappeared, the first Indian settlers crossed the Bering Straits from Asia to North America.⁴ These early travelers, hunters and gatherers, began to form themselves into clans and then into tribes or nations. Sometime in the 15th century, according to Indian tradition, the Iroquois League was founded in the upstate New York area by Deganawida and his disciple, Hiawatha.⁵ The League consisted of five nations, the Mohawk, Oneida, Onondaga, Cayuga and Seneca. Much later, the Tuscarora were taken into the League as its sixth nation. The formation of the Iroquois Confederation involved the establishment of a form of inter-tribal civil government, with a council in which each tribe had an equal vote. Fifty chiefs of the various tribal clans, known as sachems to distinguish them from the war chiefs, constituted the council and were responsible for the civil affairs of the League.⁶ Although unanimity was required in league matters, tribal autonomy also was maintained. There are those who claim that our system of federalism was patterned after the Iroquois Confederacy.⁷

In the Ho-de-no-sau-nee, the Confederacy of the Long House, as the League was called, women's rights were well established. The tribes were matriarchal and matrilineal, and women settled most disputes, exerted considerable authority in choosing sachems, and owned all the real property. Indian children took their mothers' names, a woman's life was considered worth twice as much wampum as a man's, and an equal rights amendment to the Iroquois Constitution would have been superfluous.⁸

The Iroquois established an advanced civilization in Northern New York long before the arrival of the first

Europeans. Their fierceness in war and their political abilities fostered a constant expansion of their sphere of influence. A scattering of small Indian tribes inhabited Southern New York, but they cannot be compared to the Iroquois, who were better organized, more intelligent, and less parochial.⁹ The arrival of the Europeans in New York brought profound changes in the Indian way of life and, ultimately, the destruction of the native civilization. The very first Europeans to arrive in Northern New York were French fur traders, who came to do business with the Indians. In 1540 they established a fort near the present southern boundary of the City of Albany, but the fort was damaged by the elements and abandoned around 1543.¹⁰ It was not until 1609, however, when two European explorers arrived in the region, that the stage was set for the colonization that was to follow. In the summer of that year Samuel de Champlain, accompanied by several other Frenchmen and a number of Algonquin Indians, came down from Quebec, crossed the lake that now bears his name, and engaged in battle with the Iroquois. From that day, the Iroquois linked the French with their Algonquin enemies and became a major force in preventing French ascendancy in the north.¹¹ A few months later, Henry Hudson, an English navigator in the employ of the Dutch East India Company, seeking the elusive northwest passage to the Orient, sailed up the Hudson River to the present site of Albany. Those who followed established a lucrative fur trade with the Iroquois and, in 1624, the newly formed Dutch West India Company established a settlement known as Fort Orange, later to become the capital city of Albany. This community was a successful trading post for a full year before some not-so-favored Dutch Colonists established Manahatta community Babel,¹² a small settlement known as New Amsterdam in the territory of Indians. According to one historian, the newer "soon acquired the arrogance and the sounds of the Both Fort Orange and New Amsterdam were governed, through the Dutch West India Company, under the principles of the Dutch legal and civil systems. When the company established the Patroon or manorial system in 1629, judicial and administrative authority were exercised by the Patroon, a qualified entrepreneur who was granted huge undeveloped tracts of lands to settle and colonize. The most successful of these Patroons, although he never set foot in the new world, was Kiliaen Van Rensselaer, whose sub-colony of Rensselaerwyck was established south of Fort Orange.¹³ A Patroon was the lord of his manor and, by his charter, was

empowered to hold inferior courts and to appoint magistrates and municipal officers in any cities established in his territory. The tenants of Rensselaerwyck and the other patroonships were subject to a land tenure system that has been called "the greatest single instrument of injustice in the whole history of the Hudson Valley."¹⁴ The system continued for more than fifty years after the Declaration of Independence, and led to the anti-rent wars of the nineteenth century.¹⁵ The Dutch West India Company and the Patroons brought from the Netherlands to their colonies the first courts and the first men formally trained in the law. In 1641 Patroon Van Rensselaer sent to his manor at Rensselaerwyck Adriaen Van der Donck, a young man recently educated in law at the University of Leyden, for the purpose of defending the Patroon's interests and of guiding judicial procedure in the Patroon's court. Van der Donck was the first lawyer in the first court in what is now the Northern District of New York.¹⁶ After receiving practical training in the north, Van der Donck brought his newly acquired experience to New Amsterdam¹⁷ where, according to one author, "The church remained unfinished, the fort was weak, and the muddy streets stank with excrement from pigsties and privies. Only the thirty-five taverns seemed to have been flourishing."¹⁸ Far be it from me to make any comparisons between New Amsterdam and its present day successor.

The English takeover of the Dutch territories of New Netherland in 1664 was engineered by the Duke of York and Albany, brother of Charles II. Numerous English settlers already were living in the territories when the English fleet arrived in New Amsterdam. Colonel Richard Nicolls, appointed by the Duke to be his deputy governor of the territories, promulgated the Duke's Laws, a code for the government of the area. However, Colonel Nicolls did not disturb the order of government in the Dutch towns, such as Rensselaerwyck and Fort Orange, which was renamed Albany in honor of the Duke. Accordingly, Dutch laws, courts, customs and language persisted in the upper Hudson Valley long after the changeover to British rule.¹⁹ The patroonships were confirmed by the English, who continued the practice of handing out large tracts of land to favored individuals, such as the Livingstons. As a consequence, the affairs of the Province of New York, also named for the Duke, were dominated by a virtual feudal aristocracy during the English Colonial Period.²⁰ English style democracy was yet to be established.

The first legislative body organized by some degree of popular vote in the Province of New York was convened by Governor Thomas Dongan in 1683. The Charter of Liberties adopted by this assembly was vetoed by King James II, who had not expressed disapproval of the measure when he was the more liberal Duke of York. The veto did not extend to another measure adopted by the assembly entitled "An Act to Settle Courts of Justice." This Act created four separate judicial tribunals, including a Court of Chancery to be the highest court of the Province.²¹ The Court of Chancery generally was detested by the people for the unbridled prerogatives it afforded to the provincial Governors. Although certain other courts also were provided for in the City Charters awarded to New York City and Albany, it was not until the Judiciary Act of 1691, enacted by the First Assembly of the Province of New York, that a complete legal system, deriving its procedures from the English common law, was established. The new system included a Supreme Court of Judicature and marked the beginning of the end of Dutch domination in law and public life.²² A bar began to develop along British lines, although a letter from Governor Bellomont to the Treasury Lords on September 8, 1699 is enlightening: "There was not such a parcel of wild knaves and Jacobites as those that practised the law in the province of New York, not one of them a barrister, one was a dancing master, another a glover, a third condemned to be hanged in Scotland for blasphemy and burning the bible."²³ I think that he also was the official who described one colonial lawyer as "so astute that he could examine any contract and tell at once whether it was oral or written."

Notwithstanding the harsh judgment of Governor Bellomont, the beginnings of a distinguished bench and bar, infused with the English tradition, began to emerge in the communities of the Province of New York. Court sessions, including terms of the Supreme Court, were held at Albany on a regular basis. The American spirit of independence surfaced in an early case in a Court of Sessions held at the Albany City Hall when one Philip Verplanck, a surveyor, was charged by the grand jury as follows: "That he, the said Verplanck on the 28th day of May last, at a bonfire, did make disturbance, and hindered one of his Majesty's Justices of the Peace in drinking the health of the Royal Family at the said bonfire."²⁴ It is difficult to imagine just what the defendant did, but, according to court records, he was ordered discharged "on paying the fees."²⁵ In the Colonial Courts, those accused of

crime and acquitted were required to pay costs,²⁶ a strange rule indeed! The County of Albany, established in 1683, has been called the "Mother County" since forty-seven other counties were formed from it. The development and historical progress of the Province of New York revolved around the communities established along the Hudson and Mohawk Rivers, and Albany, the crossroads of the fur traffic, was the pivotal settlement. While England and France were locked in a global struggle for supremacy, Albany's influence upon the Iroquois nations was a key factor in the defeat of the French in New England.²⁷ The settlements of Northern New York were subjected to the depredations of French and Algonquin War parties dispatched from Canada by Governor-General de Frontenac. The Village of Schenectady was destroyed and many of its inhabitants were killed by such a war party in 1690, prompting greater vigilance and preparedness on the part of the colonists and their Iroquois allies.²⁸ Among the measures taken in the wake of this defeat was the construction of a stockade now designated as a National Historic Landmark. Similar defeats were suffered by the English at Oswego and Ticonderoga. At the same time, the Iroquois, acting under the protection of James II, raided French settlements along the St. Lawrence River and provided other assistance to their English allies. Ultimate victory came with the fall of Quebec to General Wolfe in 1759.²⁹ Prior to the resolution of the French and Indian conflict, there was convened at Albany in 1754 the first Colonial Congress, with Benjamin Franklin presiding. Franklin's plan for a union of all the colonies was rejected both by the Colonies and the Crown.³⁰ The Congress at Albany was a harbinger of Continental Congresses to come, however, and Franklin's plan for autonomy was but the expression of sentiments later to be included in the Declaration of Independence and the Constitution of the United States. The grievances against the Crown giving rise to the American Revolution need not be repeated here. The colonial legal profession, trained in the British tradition, played a leading role in articulating those grievances and in leading public opinion against the oppressive measures. This leadership was recognized by the British authorities. In 1765 Lieutenant-Governor Colden of the Province of New York wrote to Lord Halifax: "All Associations are dangerous to good Government, more so in the distant dominions, & Associations of lawyers the most dangerous of any next to the Military. I never received the least opposition in my administration except when I oppose the views of

this Faction.³¹ A number of the most important battles of the revolution were fought on the soil of Northern New York. Since General Washington abandoned Manhattan Island in 1776, and since the City of New York remained in British hands for seven years thereafter, it was life as usual during that period for the cosmopolitan loyalists who remained in the great metropolis. To the North, however, there was vigorous fighting at Fort Ticonderoga, Fort Startwix and Oriskany. The entire Iroquois League, With the exception of half the Oneidas and some Tuscaroras, loyally sided with their British friends.³² The defeat of the British under the command of Burgoyne at the Battle of Saratoga in 1777 marked the turning point in the Revolutionary War. That battle was one of the most important military engagements of the war and is considered one of the most decisive in world history. Because of its the key objectives of British strategy -- to gain control of the Hudson Valley and to occupy Albany -- never were realized.³³

On April 20, 1777, while the Revolutionary War still raged and the British continued their occupation of New York City, the first Constitution of the State of New York was adopted. That Constitution was considered to be, in large part, the work of John Jay. The colonial laws and the common law of England were accepted into the law of the state. Five years later, the Legislature was to abolish primogeniture and entails so that the devolution of property would be more democratic. The new Constitution also allowed for the passage of the Colonial Judicial System into the state government. The supreme judicial function was vested in the Lieutenant-Governor, the Senate, the Chancellor and the Justices of the Supreme Court.³⁴ Robert R. Livingston was appointed Chancellor and John Jay Chief Justice of the Supreme Court.³⁵ Interestingly, the New York Supreme Court, a bench upon which I was privileged to serve as a member for the Third Judicial District, today is vested by law with "all the jurisdiction which was possessed and exercised by the supreme court of the colony of New York at any time, and by the court of chancery in England on the fourth day of July, seventeen hundred seventy-six, with the exceptions, additions and limitations created and imposed by the constitution and laws of the state."³⁶ The work on the New York Constitution was completed at Kingston, Ulster County, a location now included in the Northern District, and the first New York Senate met there on September 9, 1777.³⁷ The old Senate House still stands in Kingston, and, according to legend, its ghosts can still be heard, debating

the goals of the revolution and the future of New York.

On August 8, 1778, James Duane, with whom we all should be familiar, along with the other delegates to the Continental Congress, signed the Articles of Confederation as directed by the New York Legislature.³⁸ When the new federal Constitution of 1787 came before the State Convention at Poughkeepsie in 1788, it already had been ratified by the required nine states. Ratification by New York was opposed by powerful forces led by Governor Clinton, while Hamilton, Jay and Duane argued for adoption. The outcome of the debate is well known.³⁹ On April 30, 1789, Chancellor Livingston administered the oath of office to the first president of the United States. A federal republic had been created, and the history of the Federal Judiciary in New York was about to begin.⁴⁰

The New York supporters of Washington and the new federal constitution assumed high office in the national government. John Jay became Chief Justice of the United States, Alexander Hamilton was the first Secretary of the Treasury, and James Duane became the first Judge of the United States District Court for the District of New York, the "Mother Court."

At this point, I am constrained to take issue with Judge Cabranes, my distinguished colleague from the District of Connecticut. Last year, from this podium, Brother Cabranes boldly advanced the heretical claim that his District is the Mother Court, citing no less an authority than Judge Timbers for the proposition. The Cabranes-Timbers thesis is predicated upon the fact that one Richard Law, then a Judge of the Supreme Court of the Nutmeg State, was nominated by President Washington for Judge of the District of Connecticut twenty-four hours before the President nominated James Duane for the District of New York.⁴¹ While it is true, as asserted by Judge Cabranes, that President Washington sent to the Senate on September 24, 1789 a list of eleven nominations including the name of Richard Law for appointment to various District Courts, and that the President did not nominate James Duane until the next day, priority in judicial nominations does not establish the seniority of a Court. In fact, all twelve nominees were confirmed by the Senate at the same time, on September 26, 1789.⁴² What Judge Cabranes did not mention, and what ordinarily establishes the primacy of a Court, is the date of its first sitting. The Judiciary Act of 1789 provided that the District

Courts of New York and New Jersey were to hold their first sessions on the first Tuesday of November, 1789.⁴³ The New Jersey Court did not convene on the appointed day because of the illness of the Judge of that Court. (He probably was felled by swamp gas). However, the United States Court for the District of New York, with Judge Duane presiding, did sit for the first time on November 3, 1789 as mandated by the Judiciary Act. It thus became the first court ever convened under the sovereignty of the United States and therefore is fully entitled to the designation of "Mother Court."⁴⁴ According to the Judiciary Act, the District Court of the District of Connecticut was not allowed to convene until the third Tuesday of November, 1789, apparently to allow for the development of some precedent by the District of New York.

Unfortunately, the Mother Court passed away in 1814, survived by two children, the Northern District and the Southern District, the Northern being the elder. I shall develop this theme in greater detail later. Suffice it to say at this point that the younger child, craving attention and respect, has for many years misrepresented itself as a Court that no longer exists. Today we debunk the myth perpetrated for so many years by the naughty younger child.

Although Judge Duane was born in New York City and served with distinction there as Mayor and as the first Judge of the District of New York, his avocation was upstate land development. He inherited from his father a large tract of land in the present Northern District County of Schenectady and continued to purchase land in that area and elsewhere in the Mohawk Valley until late in his life. The present Town of Duanesburg, created in 1765, was almost entirely owned by him, and he contracted with twenty German families from Pennsylvania to begin the settlement there. Following his retirement from the Bench, Judge Duane took up permanent residence in Schenectady, where he had spent considerable periods of time with his family over the years.⁴⁵

Judge Duane was not the first to be impressed with the scenery of Schenectady and the Mohawk Valley area. Schenectady was chosen as a capital village by the Iroquois League and bore the Indian name of Schonowe. The Dutch called the place Schoonachtendel, meaning beautiful valley. Arendt Van Curler, nephew of the first Patroon Van Rensselaer and founder of Schenectady, wrote of "the most beautiful land on the Mohawk river that eye ever saw, full a

day's journey long.⁴⁶

In this lovely valley Judge Duane died in 1797. He is buried beneath the church at Duanesburg in the Northern District with his wife, Mary, daughter of Robert Livingston, Jr., third lord of the Livingston Manor. The land upon which my wife and I reside in the Town of Livingston, Columbia County, was once a part of that same Livingston Manor. We of the Northern District claim as our own James Duane, lawyer, patriot, statesman, colonizer and Judge of the first United States Court, who lies at eternal rest in the place he loved so well.⁴⁷

Judges Lawrence, Troup and Hobart followed Judge Duane in short order as Judges of the District of New York. In 1805 President Jefferson appointed Mathias B. Tallmadge to succeed Hobart. While Tallmadge has suffered at the hands of some historians, others have referred to the "distinction" of his judicial service.⁴⁸

Born at Stamford in Dutchess County in 1774, Tallmadge studied law with Ambrose Spencer at Hudson following his graduation from Yale.⁴⁹ Colonel James Tallmadge, his father, had led a company of volunteers at the capture of Burgoyne at Saratoga.⁵⁰ Spencer, Tallmadge's preceptor, conducted a successful law practice at Hudson prior to his service as New York Attorney General and later Chief Judge of the New York Supreme Court.⁵¹ The City of Hudson, now County Seat of Columbia County, was founded by New England whaling men at a convenient location on the Hudson River in 1783 and held a significant position as a whaling port until the early 19th century.⁵² Much of its early architecture has been preserved, and the City is rich in history. It is my birthplace, and I spent a large part of my career in law practice and public service there. It can be said that I, like Judge Tallmadge, learned a great deal about life and law at Hudson. My preceptor was Abram Miner, my father, now in his fifty-seventh year of practice in that City.

After he completed his law studies at Hudson, Tallmadge married Elizabeth, daughter of Governor George Clinton, and began the practice of his profession at Herkimer, County Seat of Herkimer County, another location now in the Northern District. There is no record of how romance came to Mathias Tallmadge, but it is significant that his brother James, also a distinguished lawyer, served for a time as private secretary to Governor Clinton. In addition to his involvement in law practice at Herkimer, Tallmadge was serving as a State Senator when he was called to the Bench by

President Jefferson. It can be assumed that he moved to New York City with great reluctance to take up his duties as United States Judge for the District of New York, apparently the first "upstate" man to do so.⁵³

In 1812, seven years after Tallmadge's appointment, Congress provided for a second judge for the District of New York, the first time that two judges were authorized for a single district. The Act also required that terms of the Court be held at Utica, Geneva and Salem and that a clerk be appointed to reside at Utica.⁵⁴ Judge Hough attributes this development to the beginning of federal business in the interior of New York State.⁵⁵ According to the docket books of the District of New York, however, there was considerable federal litigation outside of New York City long before 1812. The new legislation provided that the senior judge preside, that his opinion would prevail in case of disagreement, and that he act with the Supreme Court Justice in holding the Circuit Court. This state of affairs would not long satisfy the man appointed to the junior judgeship by President Madison on May 27, 1812. An examination of the path followed by William Peter Van Ness to that position provides a reliable basis for a prediction of things to come in the New York Federal Courts.

Van Ness was another Columbia County man, born in 1778 in the Town of Claverack (now Ghent). His father was Peter Van Ness, a regimental commander at the surrender of Burgoyne and first Judge of the Court of Common Pleas of Columbia County. A large portrait of Peter Van Ness arriving by carriage in full regalia to hold a session at the courthouse in Claverack adorns the rear wall, opposite the Bench, in the main courtroom at the present County Courthouse in Hudson. During my service as District Attorney of Columbia County, I often turned to address that painting after receiving unfavorable rulings from certain successors of Judge Van Ness. Shortly after the birth of his son William, Peter Van Ness removed his family to Kinderhook, where he constructed the mansion known as Lindenwald, later the home of President Martin Van Buren and now a national historic site. Washington Irving was a frequent visitor there, and his Legend of Sleepy Hollow is set in Kinderhook.⁵⁶ It is said that the characters of the book, including Ichabod Crane and Katrina Van Tassel, were based on people Irving met during his visits to the Van Ness household. As for the Headless Horseman, Kinderhook residents say that he still rides through the silence of an autumn night, just

as he did long before Mr. Irving became a visitor to their town and learned their local legends.

Judge Peter Van Ness participated in terms of Oyer and Terminet in Columbia County from 1788 to 1795. During those years, three men were convicted of horse stealing, two of robbery and another of forgery. All were sentenced to be hanged and the sentences were carried out in all cases, the last "within two miles of the court house in Claverack on or near the road leading to Kinderhook."⁵⁷ Many Columbia County residents still believe in capital punishment, if it's not too severe.

Following his education at Columbia College and his study of law in the office of Edward Livingston, William Van Ness began law practice in New York City and quickly became involved in political activities. He was best known as a supporter and protege of Aaron Burr, and he acted as Burr's second in the infamous duel with Alexander Hamilton. Indicted for his part in the duel, Van Ness fled to Kinderhook, where he sought the help of Martin Van Buren, with whom he previously had political differences. Van Buren assisted him in the restoration of his civil rights, and the two later became associated in several enterprises, including the Bank of Hudson. After their reconciliation, Van Ness and Van Buren had other quarrels, and it cannot be denied that the political career of William Van Ness was indeed an eventful one. The Van Ness political record has been described as "devious," and it has been said that he "confused truth and fiction" in his written defense of Burr.⁵⁸

I have concluded that the separation of the District of New York into two parts in 1814 was in large part the work of William P. Van Ness. In this conclusion, I take issue with Judge Hough, who has written that Judge Tallmadge sought the separation "in order that he might reign alone" in one district.⁵⁹ I have found no historical support for such an accusation, and the letter of John T. Irving to Van Ness cited by Hough, reveals nothing other than an animosity toward Tallmadge and an opinion that there was no necessity for the separation of the District of New York. Whether Van Ness discussion. The advancement, his District of New York. shared these views is not apparent in the Hough character of the man, his zealous pursuit of recent appointment to the Bench, and his partisan political affiliations⁶⁰ all suggest that Van Ness was dissatisfied with his position as second fiddle in the District of New York and pressed for a separate district where he

could preside alone. When Henry Werker refers to me as the successor to Van Ness, I trust that he refers only to the fact that Van Ness and I were the only native sons of Columbia County to be appointed to the Federal Bench in New York.

By the Act of April 9, 1814, the District of New York was divided into the Northern and Southern Districts, the Southern District to be held in New York City and the Northern to be held at Utica, Canandaigua and Salem. The statute assigned Judge Tallmadge to the Northern District and Judge Van Ness to the Southern District.⁶¹ Thus ended the glorious history of the United States District Court for the District of New York, the "Mother Court." Although the two new courts were created at the same time, I child of the Court became case of the division of separate districts, it have designated the Northern District as the eldest Mother Court, because the Senior Judge of the Mother the Judge of the Northern District. In the unusual a two judge district court into two is commonly accepted that the senior judge of the original lstrlct brings his seniority to the new court to which he is assigned. This is recognized in the legislation, where the name of Judge Tallmadge precedes the name of Judge Van Ness.⁶²

Here I must digress to take issue customarily employed by the Southern District. In celebration was conducted to commemorate the 150th Southern District.⁶³ By my computation, 1814 plus with the mathematics 1939 a large year of the 150 equals 1964. The younger child obviously has had a problem with arithmetic, having celebrated its 150th birthday twenty-five years too soon. 1989 will not mark the 200th anniversary of the Southern District. Passing reference also should be made to the grandchildren of the Mother Court -- the Eastern District, created from the Southern in 1865⁶⁴ and the Western, created from the Northern in 1900.⁶⁵ Perhaps all the Mother Court's descendants should share in celebrating the 200th anniversary of their common ancestor in 1989.

By 1818, the Counties of Rensselaer, Albany, Schenectady, Schoharie and Delaware and the remainder of New York State lying north of those counties Were included in the Northern District.⁶⁶ The seventeen_n westernmost counties of the state were separated to form the Western District in 1900.⁶⁷ With the addition of the Counties of Columbia, Greene and Ulster from the Southern in 1978,⁶⁸ the Northern District attained its present territorial complement of

thirty-two upstate counties, bounded on the north by Canada and the St. Lawrence River, on the east by Lake Champlain and the States of Vermont and Massachusetts and on the south by the State of Pennsylvania. This is an area in excess of 30,000 square miles. I once told a Southern District lawyer that I could get in my car and drive for a full day without coming to the end of the Northern District. He replied: "I once had a car like that."

In separating the Districts, Congress also provided that the Northern District Court have Circuit Court jurisdiction, with appeals to lie to the Circuit Court of the Southern District.⁶⁹ After 1826, appeals were allowed directly to the Supreme Court, as in the case of other Circuit Courts. It should be remembered that the Circuit Courts had both trial and appellate jurisdiction from 1789 to 1891, and that these courts originally consisted of a Supreme Court Justice, sitting as a Circuit Judge, and a District Court Judge. It was not until 1869 that separate Circuit Judges were appointed, and the Circuit Court of Appeals as we know it today was established in 1891.⁷⁰ The Circuit Courts of Appeals today are recognized by the Bar, and certainly by the District Judges, as the sources of most legal knowledge. One lawyer, however, has had the temerity to describe them as Courts for the correction of the errors of District Courts and the perpetuation of their own. The summary orders issued by the Circuits have caused the bar some concern, not only as to the question of precedent, but also as to intelligibility. I am told that one such order consisted of only one line in the following words: "We reverse, substantially for the reasons stated in the opinion of the Court below."

By 1912, the remaining trial jurisdiction of the Circuit Courts had been transferred to the District Courts, which then became the principal federal courts of original jurisdiction.⁷¹ It is interesting that the so-called Midnight Judges' Act of 1801,⁷² repealed in 1802,⁷³ providing for Three-Judge Circuit Courts of trial and appellate jurisdiction, established a separate Circuit Court of the District of Albany to be held in the City of Albany for all counties to the north of Dutchess and Ulster.⁷⁴

The omission of Congress to appoint a Marshal and District Attorney for the Northern District was cured by the Act of March 3, 1815,⁷⁵ and the Northern District finally was ready for business. According to the Common Rule Book, Judge Tallmadge convened the first session of the Northern District at Utica on September 7, 1815. A Marshal and a

Clerk were appointed, and the Clerk was directed to procure a seal. Judge Tallmadge also ordered the Clerk "to apply to and receive from the Clerk of the Southern District of New York all the papers appertaining to any prosecution or prosecutions founded on a seizure made within the Northern District of New York -- to the end that said suits may be tried within the said Northern District of New York."⁷⁶ Judge Van Ness apparently was greatly agitated by this seemingly innocuous order as will be seen in the curious case of the Merchant Schooner Lord Nelson.

On June 5, 1812, just thirteen days before the Declaration of the War of 1812, the Schooner Lord Nelson was captured on Lake Ontario by the U.S. Navy Brig Oneida, commanded by Lieutenant M.T. Woolsey.⁷⁷ According to Lieutenant Woolsey, the Schooner was seized for suspected violations of the Embargo Laws,⁷⁸ but it was the opinion of James Crooks, one of the vessel's Canadian owners, that the purpose of the seizure was to secure a naval force on the Lake preparatory to war which, no doubt, was determined upon long before.⁷⁹ As a matter of fact, the Lord Nelson was renamed "Scourge" after her capture and did become part of the United States naval force on Lake Ontario, where she later capsized in a line-squall while awaiting action against the British-Canadian squadron.⁸⁰ An account of the vessel's destruction, described as a classic of naval drama, was written by James Fenimore Cooper.⁸¹

The Lord Nelson was libeled by the government in the United States District Court for the District of New York, her sale was ordered by Judge Van Ness on August 29, 1812 and the proceeds of sale were paid into Court.⁸² After the separation of the District, Judge Tallmadge procured copies of the libel and related papers from the Clerk of the Southern District, determined that the seizure was improper and, on July 11, 1817, directed that the Clerk of the Southern District pay the proceeds to the owner-claimants.⁸³ Judge Van Ness, who continued to be a legend in his own mind, decided that all cases commenced in the District of New York were to be continued in the Southern District. In his typically pompous style, he decreed that the Northern District had no jurisdiction to order the payment of the proceeds,⁸⁴ although the case arose in the territory that had become part of the Northern District. In good lawyerly fashion, the United States Attorneys for the Northern and Southern Districts devised a plan to get the money paid to the claimants. Jonathan Fisk, U.S. Attorney for the Southern and bearer of the same surname as a later U.S. Attorney

(without the "e"), and Roger Skinner, U.S. Attorney for the Northern and later District Judge in the Northern, proposed that Judge Tallmadge's decree be confirmed by Judge Van Ness.⁸⁵ Apparently, Judge Tallmadge rejected that proposal,⁸⁶ but the matter was resolved by the Act of April 3, 1818,⁸⁷ which provided that the Northern and Southern Districts were to have jurisdiction over all causes and seizures arising within their respective districts even though commenced in the District of New York. The claim of Judge Van Ness that the Southern District was the sole successor to the District of New York was laid to rest by this legislation.

There is one footnote to the story of the Lord Nelson. When the Northern District decree for payment finally was presented, six years after the seizure, the claimants could not be paid. The Clerk of the Southern District, one Thetson Rudd, an appointee of Van Ness, and a figure infrequently referred to in the histories of the Southern District, had absconded with over \$100,000 of court funds.⁸⁸ In 1819 the Congress of the United States declined to make an appropriation to pay the former owners of the hapless Schooner.⁸⁹ It was not until 1930, following the adoption of an international treaty, that the owners' heirs finally were paid.⁹⁰ At last report, the Hamilton-Scourge Foundation of Hamilton, Ontario was preparing to raise the vessel from the waters of the lake, where this archeological treasure can still be seen.⁹¹

Mathias Burnet Tallmadge, first Judge of the Northern District, died in 1819. Before his death, the War of 1812 had been concluded by the Treaty of Ghent and American independence was secured. New York's ports had been freed from the British blockade and construction of the Erie Canal had been commenced.

By appointment of President Monroe, Tallmadge was succeeded by Roger Skinner, a Jeffersonian Democrat and the former United States Attorney for the Northern District. Skinner had served in state office as District Attorney, Senator and Member of the Assembly from Washington County before his appointment to the Bench. He was born at Litchfield, and it seems certain that he studied at the law school there before his admission to practice in Connecticut.⁹²

Apparently, Judge Skinner was a resident of Albany at the time of his commission on November 24, 1819. In 1818, Congress had designated Albany and Utica as the places for the holding of court,⁹³ and Judge Skinner conducted terms

in those two cities until his untimely death in 1825, a mere six years after his appointment. He is buried in the Albany Rural Cemetery.⁹⁴

In 1838, Congress added Rochester and Buffalo terms of court and required the judge to designate a term in Saint Lawrence, Clinton or Franklin County.⁹⁵ In the same year Canandaigua was added to Albany as a place for holding the Circuit Court, and the district was divided into three divisions for the jury trial of issues of fact in the divisions where the issues arose.⁹⁶ Although the divisions were abolished by statute in 1860,⁹⁷ divisions for jury selection purposes only have been continued by local rule.⁹⁸ In 1864 Auburn was added as a location for the District Court, the additional term to be designated by the judge was made discretionary, and Utica was added as a location for the Circuit Court.⁹⁹ With the separation of the Western District in 1900, Buffalo and Rochester were eliminated, and Binghamton and Syracuse terms were added to the Northern District. Syracuse also was designated as a place of holding the Circuit Court.¹⁰⁰

Although a term at Malone was added in 1937,¹⁰¹ the court has not held a session there in some years and, in fact, no federal court facility presently exists in that far northern location so battered by the storms of winter.

The third Judge of the Northern District, Alfred Conkling, made significant contributions to the development of American law. Inheritor of a family name synonymous with patriotism in the Revolutionary War, his descendants included great lawyers, judges and statesmen. Following his graduation from Union College in Schenectady in 1810, Conkling studied law in the office of Daniel Cady in Johnstown, Fulton County, and was admitted to the bar in 1812.¹⁰² Cady was a distinguished lawyer of his day and served as Justice of the New York State Supreme Court in the Fourth Judicial District and as Judge of the New York Court of Appeals. It was Judge Cady who advised the heirs of Sir William Johnson that the vast estates surrounding the manorial home in Johnstown could not be recovered after confiscation by the new republic. Sir William was the famous English Indian commissioner who did so much to hold the loyalty of the Iroquois for the Crown. Although Sir William died before the Revolution, his son and heir, Sir John Johnson, actively opposed the American forces in the Revolution, and that opposition resulted in the confiscation of the Johnson holdings.¹⁰³ Following his admission to the bar, Alfred Conkling moved to the adjoining County of

Montgomery and served as its District Attorney. He was elected to the 17th Congress as an anti-Jackson Democrat and moved to Albany after his congressional service. He practiced law in that city until 1825, when President John Quincy Adams appointed him to the Northern District Bench, a position he was to hold with great distinction for the next twenty-seven

years.¹⁰⁴ Judge Hough, in his Southern District, refers not entirely unbiased history of the to the publication by Judge Betts of the first "worthy" work on American Admiralty Practice.¹⁰⁵ In point of fact, the first definitive book on Admiralty jurisdiction, law and practice was published by Judge Alfred Conkling of the Northern District in 1848.¹⁰⁶ The Conkling publication included forms of pleading and other tips useful to the bar, features not available in the earlier Betts book. Judge Conkling was a prolific writer. His treatise on the organization and jurisdiction of the Federal Courts, published in 1842,¹⁰⁷ and his book on executive powers,¹⁰⁸ published in 1866 after he left the Bench, still are valuable reference works. The executive powers book has been published in five editions.

The December 1983 edition of the New York State Bar Association News carried a statement by New York State Regent Emlyn I. Griffith, an attorney from Rome, New York (Northern District), concerning the importance of law related education in the New York public schools.¹⁰⁹ It was in response to just such a statement by the secretary of the Board of Regents that Judge Conkling wrote The Young Citizens Manual¹¹⁰ in 1839. In its preface he said: "It is believed to be high time that such portions of our laws relating to the ordinary business of social life as can be readily understood and especially that our Criminal Code, should be rendered more easily accessible to all, and should henceforth form a part of the education of the whole body of our youth."¹¹¹

The violation of the copyright laws by George F. Comstock after he left office as the Official Reporter of New York Court of Appeals cases gave rise to an opinion by Judge Conkling so significant that it was printed and distributed as a separate publication.¹¹² Conkling opinions dealing with various branches of the law may be found throughout the Federal Court Reports covering his term of service. His opinion in United States v. Cobb¹¹³ was referred to in the fine

exhibit entitled "Slavery and the Federal Courts" prepared by the sponsors of this lecture.

The defendants in Cobb were charged with unlawfully aiding in the escape of a fugitive slave from Syracuse, a hotbed of abolitionist sentiment. In holding the defendants for grand jury action after a preliminary examination, Judge Conkling, a former slave owner himself, ¹¹⁴ expressed indignation at the immorality of the Fugitive Slave Laws. Nevertheless, he condemned the use of force and violence and urged obedience to the nations' laws.

Judge Conkling also was a noted lecturer of his day. His address in 1856 to the graduating class at Albany Law School regarding professional obligations, ¹¹⁵ and his 1828 discourse on the virtues of Governor DeWitt Clinton, ¹¹⁶ delivered before the Phi Beta Kappa Society at Union College, are as instructive and timely as if they were written today. He was a man of great personal integrity. It is reported that he presented himself at the office of a certain newspaper when he failed to receive a bill for his daily deliveries. The proprietor of the newspaper, who had received some valuable official advertising from the Northern District Court, advised the Judge that there was no charge. Judge Conkling replied: "No, sir; no, sir; I thank you for your courtesy; you can, doubtless, in your position feel able to send me your paper, as you say; but I, in my position, cannot afford to accept of that or any other favor."¹¹⁷ The Judge thereupon paid the bill, demanded a receipt, and left the newspaper office. Some judges will go to any length to avoid reporting a gift on their annual financial statements. It may very well have been Judge Conkling who asked a defendant whether he was represented by counsel and was told: "God is my lawyer." The Judge replied: "You should have someone locally."

Seven children were born to Alfred Conkling and his beautiful and talented wife, Eliza, who was known as the "Belle of the Mohawk"¹¹⁸ before her marriage. The family moved to Auburn in 1839 at the suggestion of William Seward and remained there until the completion of Judge Conkling's judicial service. Many famous visitors were received at the Conkling home in Auburn, including Chancellor Kent, ex-Presidents Adams and Van Buren, and ex-Governors Throop and Seward.¹¹⁹ Seward was an Auburn resident also and a brilliant lawyer whose cases included the defense of Horace Greeley in the libel suit brought by James Fenimore Cooper. He was a courageous abolitionist, a great political leader,

and served as United States Senator before his service as Secretary of State in the Lincoln and Johnson Administrations.¹²⁰

One of the Conkling daughters married Reverend Samuel Coxe and became the mother of Alfred Conkling Coxe, sixth Judge of the Northern District. A son, Frederick, organized a regiment of New Yorkers and served as its Colonel in the Civil War. He later organized the West Side Savings Bank in New York City and served as its president.¹²¹

Roscoe was the fourth, and by far the most famous, of the Conkling children. Formal school work was difficult for him and, although he had inherited his mother's charm, he was somewhat of a disappointment to his scholarly father. As he matured, however, it became apparent that he was a gifted orator and the possessor of a near perfect memory, qualities that were lacking in Judge Conkling.¹²² He was admitted to the bar in 1850 and tried his first case before his father. It was, apparently, a time of greater public confidence in the integrity of the bench and bar.

In a later case Roscoe successfully defended a man accused of forgery by demonstrating that his client was unable to write.¹²³ Following his service in Congress, where he made his first important speech in support of the fourteenth amendment, Roscoe Conkling became a United States Senator and an important leader in the national government. He was a strong Supporter of President Grant and was instrumental in the passage of the civil rights legislation with which present day Federal Judges are so familiar.¹²⁴ He twice declined offers to serve on the United States Supreme Court,¹²⁵ and he resigned from the United States Senate in 1881 in a disagreement with the President over a matter of principle.¹²⁶ These unusual actions made Roscoe Conkling one of the most unique figures in American political history. In the manner of most politicians, however, he was not lacking in self-respect, and it was said that he carried on a great love affair -- unassisted.

When Alfred Conkling resigned from the Northern District Bench in 1852 to accept an appointment as Minister to Mexico, his son had just started upon a political career. After serving in Mexico for one year, Judge Conkling went to Omaha, Nebraska, where he practiced law for the next eight years. He then returned to upstate New York, where he occupied himself with literary pursuits until his death at Utica in 1874 at the age of eighty-five. Roscoe Conkling was by

then at the height of his political career.¹²⁷

One can only speculate on the reasons why Millard Fillmore asked Judge Conkling to undertake the mission to Mexico. It is a fact, however, that Fillmore appointed his former law partner, Nathan Kelsey Hall, to the Northern District Bench immediately upon Conkling's departure. Born in Onondaga County, Hall moved to Erie County at an early age and worked at farming and shoemaking before studying law in Mr. Fillmore's office. Eventually, the law firm of Fillmore, Hall & Haven was formed in Buffalo and became prominent in the Western part of the state. Hall gained particular prominence as an equity lawyer, and it is said that his services were much sought after in such matters. When it comes to public service prior to appointment to the Federal Bench, I believe that the career of Nathan Kelsey Hall is without parallel. He served as deputy clerk of Erie County, clerk of the county board of supervisors and as city attorney and alderman in Buffalo. By appointment of Governor Seward, he held the judicial offices of Master in Chancery and Judge of the Court of Common Pleas. He was elected a member of the State Assembly and served one term in Congress before returning to his law practice just before Fillmore's election as President of the United States. Fillmore appointed him to the position of Postmaster General in 1850, and he served in that position, except for a brief period during which he served as Acting Secretary of the Interior, until his appointment to the Northern District Bench in 1852.¹²⁸

Until his death twenty-two years later, Judge Hall performed his judicial duties with great ability and diligence. One biographer describes him as "a man of much more than ordinary ability, an able and upright judge, and thoroughly capable and qualified for administrative office."¹²⁹ His obituary described him as "a man of much ability, of a genial though retiring disposition, and much esteemed as a lawyer and Judge."¹³⁰ Judge Hall was required to take up where Judge Conkling had left off in the trial of the Syracuse violators of the Fugitive Slave Laws. None of those defendants ever served a prison term, and most of the cases resulted in acquittal or dismissal.¹³¹

President Lincoln's suspension of the Writ of Habeas Corpus during the Civil War led to an important decision by Judge Hall in 1862. The reported opinion in Ex parte Benedict¹³² relates to the case of Reverend Judson D. Benedict, a

pacifist arbitrarily arrested by order of the War Department. Anticipating the Supreme Court's decision in Ex parte Milligan¹³³ by some four years, Judge Hall held that the President could not constitutionally suspend the Great Writ. Judge Hall's order of release was thwarted when Benedict was whisked out of Hall's jurisdiction after he left the courtroom and taken to Washington, D.C. by the U.S. Marshal under order of the War Department.¹³⁴ Under the circumstances, the Judge declined to hold the Marshal in contempt.

As in the case of all Federal Judges, Hall was confronted with issues in areas of law with which he previously was unfamiliar. By study and hard work, he became proficient in admiralty, patents and bankruptcy, and his opinions in cases involving these matters frequently were reported. He became well known to the admiralty bar in the Southern District, where he often was called upon to preside in such cases. The increase in maritime business on the inland lakes also gave rise to extensive admiralty litigation in the Northern District.¹³⁵

My research assistant took an early dislike to Judge Hall when she discovered, in the Federal Archives, the original papers in a case entitled "The United States of America v. Susan B. Anthony."¹³⁶ I think that her antipathy was directed at the indictment more than anything else. In the indictment, Ms. Anthony was charged with illegally voting in a congressional election, "the said Susan B. Anthony being then and there a person of the female sex."¹³⁷ The indictment was handed up to Judge Hall at Albany, the defendant was convicted after trial in the Circuit Court at Canandaigua and was sentenced to pay a fine of \$100.00 and costs.¹³⁸ Although the Marshal certified that he could not find any property in the district to satisfy the judgment, and although it appears that the fine and costs never were paid, my research assistant is of the opinion that the Judge should at least have suspended imposition of sentence. When I think about the Judge returning to his home on June 19, 1873 to report that his work for the day included the sentencing of Susan B. Anthony, I can only say: "Better him than me."

In spite of his part in the Anthony case, Judge Hall was a great credit to the Northern District. In a eulogy delivered shortly after his death in 1874, he was described as "a gentleman of the old-time school, a Type of a class rapidly passing away"¹³⁹ Another description of Hall could be applied just as well to any one of the present Judges of the

Northern District: "He never played, and, in fact, wore himself out by intense application to the heavy business of his district."¹⁴⁰

The Divine Hand of Providence often receives some earthly guidance in the selection of Federal Judges. This certainly was true in the case of Judge Hall, and it was true in the case of his successor, William James Wallace, appointed by President Grant to the Northern District Bench in 1874. Wallace was a Syracuse native who received a degree from Hamilton College. At his application for admission to the bar, it was his good fortune to meet Roscoe Conkling, who was a member of the examining committee. A close friendship developed between the young lawyer and the eminent Senator, and I suppose that there is some significance in the fact that the President who appointed Wallace was known to have been influenced in many things by Roscoe Conkling.¹⁴¹ The newspapers reported the Wallace appointment in laudatory terms, noting that Wallace was a Republican with an excellent reputation as a lawyer and that he had served a single successful term as Mayor of Syracuse.¹⁴²

Although Syracuse now is the largest city in the Northern District, it did not become an incorporated village until 1825, and its later growth is attributed to the opening of the Erie Canal. Syracuse did not have a resident lawyer until 1819, and the law school at Syracuse University was not established until 1895.¹⁴³

The embezzlement of funds from the First National Bank Of Saratoga and the Commercial National Bank of Saratoga provided the opportunity for Judge Wallace to write an important Northern District opinion in 1881 on a motion to quash the indictment of the defendants charged with those crimes. An attorney representing creditors of the banks not only drew the indictments but appeared before the grand jury, where he gave testimony, introduced exhibits and commented on the evidence. In granting the motion to quash, Judge Wallace outlined the rules for inquiring into grand jury determinations, described the circumstances under which a court could interfere in grand jury proceedings, and found that the grand jurors were improperly led to their conclusions in the case at bar.¹⁴⁴

In 1882 Judge Wallace was appointed to succeed Samuel Blatchford as Circuit Judge of the Second Circuit. Blatchford, a former law partner of William Seward in Auburn, had been appointed to the United States Supreme

Court.¹⁴⁵ In 1892 Judge Wallace became the first presiding Judge of the newly established Court of Appeals for the Second Circuit, serving in that capacity until his retirement in 1907 to join a law firm with a Wall Street address. He must have been seized by a strange malady in 1897 while Circuit Chief, because he ran on the Republican ticket for Chief Judge of the New York Court of Appeals in that year and lost.¹⁴⁶ Judge Learned Hand was to fall victim to the same malady some years later.

William Wallace was known as a generous and charitable man, and his will provided for the distribution of \$160,000 and two parcels of New York City real estate for the benefit of indigent children.¹⁴⁷ Upon being approached by a beggar who said that he hadn't tasted food in a week, one of Judge Wallace's less generous colleagues is reported to have said: "Don't worry. It still tastes the same." Five hundred Judges and lawyers attended the retirement dinner for Judge Wallace at the Waldorf-Astoria on May 29, 1907. In his remarks at the dinner Judge Wallace spoke out against a pending proposal by a congressional leader to make the office of Federal Judge an elected position, with a term of seven years. Some things never change! He also discussed what he referred to as unconstitutional state legislation "arbitrarily interfering with private interests and imposing unlawful restrictions upon lawful occupations."¹⁴⁸ Judge Wallace's views were somewhat on the conservative side. During a speech he made earlier that year at a dinner in honor of Supreme Court Justice Edward Thomas, he made this statement: "Who can find among the members of Congress any who would dare to stand up and oppose a labor measure supported by labor unions?"¹⁴⁹ The remark may have been injudicious for a Circuit Judge, but the New York Times reported that it was applauded vigorously by the Judges and lawyers on hand for the occasion. Among the Judges present was Alfred C. Coxe, Wallace's successor as Northern District Judge.¹⁵⁰ It was no small advantage to be born Alfred Conkling Coxe at Auburn in 1847, and of Arthur C. the grandson of his mother, Judge Conkling's daughter, saw to it that he received a classical education and a degree from Hamilton College. This boy was a nephew of Senator Roscoe Conkling Coxe, Episcopal Bishop of Western New York, and the United States Judge for the Northern District. and his clergyman father education, and he was before his admission to the bar following a clerkship in the law office of Uncle

Roscoe. With this background in mind, I have concluded that the Utica law firm of Conkling, Lord & Coxe must have enjoyed some moderate success. (I wonder if Lord was a real person or merely a reference to certain connections of the other partners). I suppose that it came as no great surprise to the upstate bench and bar that, upon the appointment of Judge Wallace to the Circuit Bench, President Arthur chose Alfred Conkling Coxe to succeed Wallace in 1882.¹⁵¹ It was Chester Arthur, after all, who was so anxious to appoint Uncle Roscoe to the Supreme Court.

Although the appointment of Judge Coxe to the bench may have been predictable, the quality of the service he would render was not at all foreseeable. He became a great Judge, and he wrote extensively on many legal subjects. I have found all his writings to be scholarly, interesting, well organized and sprinkled with humor. His District Court service, from 1882 to 1902, spanned a period of dynamic growth in American industry. This growth was fostered in part by the development and application of new inventions. It was an exciting time for American business, but it resulted in a substantial increase in patent litigation in the Northern District.

Judge Coxe handled claims for the infringement of glove fastener patents (there is a city of Gloversville in the Northern District); of the Bell Telephone patents; of patents secured by Edison for incandescent electric light plants; and of patents for improvements in the construction of artesian wells. By decree dated October 28, 1887 in an action brought against the Rochester Telephone Company, Judge Coxe determined that "the said Alexander Graham Bell was and is the original and first inventor of the telephone." The Bell patents had been confirmed in litigation in the Northern District the previous year, when Judge Coxe directed the Baxter Overland Telephone and Telegraph Company to deliver to the Clerk the telephone instruments it had manufactured. The Bell case files in the Federal Archives include an oak telephone receiver entered in evidence,¹⁵² and affidavits by Mr. Bell and his assistant, Thomas A. Watson, who received the first telephone call.

An action brought before Judge Coxe sitting as a Circuit Judge in the Northern District by the Edison Electric Light Company against the E.G. Bernard Company and others illustrates the problems faced by Federal Judges in civil

litigation generally and in patent cases in particular. The action was one for infringement of letters 1882 "for all improvement in dynamo-electric machines." novelty and the so-called Brush patent electroplating devices. In finding in patent issued to Thomas A. Edison in regulating the generative capacity of the defense was based on lack of for a dynamo used in favor of plaintiff Judge Coxe wrote: "This case presents the most flagrant instance of elephantiasis in patent litigation which has come under my observation." In reducing costs to the prevailing party to one-half (later raised to three-quarters), Judge Coxe remarked upon the excessive size of the record, a condition for which he blamed both sides. He wrote that too many experts had testified at too great a length for the simple issue involved and said: "Such records obstruct the path of truth, retard equity and tend to shorten life and promote insanity. If the bar would unite with the bench in confining the records of equity cases within reasonable limits it is thought that the reform would be even more advantageous to the former than the latter."¹⁵³ To that observation, all Federal Judges will say "amen."

On March 19, 1895, Judge Coxe delivered an amazing charge to the District Court grand jury sitting in Utica.¹⁵⁴ The subject of the charge was the need for money for the operation of the Federal Courts and especially for the Northern District Court. This, of course, was not the first use of a federal grand jury for educational purposes. The Justices of the Supreme Court, as traveling Circuit Judges in the early days of the Republic, often gave grand jury charges extolling the advantages of a strong federal government. Judge Coxe was concerned with more mundane things in his grand jury charge at Utica. He discussed the necessity for an official stenographer, the reduction in the number of bailiffs assigned to the court, and the lack of funds to provide meals to jurors in civil cases. It appears that if the parties did not pay for the food, the jury would be discharged at meal time and a second trial would be necessary.

Listen to the words of Judge Coxe: "Several prisoners have escaped for lack of sufficient officers to guard them. At a recent term of the court one of the prisoners left the prisoner's box, came up on the platform behind the bench and commenced a conversation with the judge during the trial of a case. There was no officer in the court room to see the impropriety, not to say indecency of such conduct and prevent it. It seems to me intolerable that the court should be crippled thus in the discharge of its duty in order that the government may save the two dollars per day which would be

paid to a few extra bailiffs. This is not economy, it is parsimony.¹⁵⁵ The Judge observed that Congress had provided no money the previous year for a term of court and that it was necessary to adjourn court without date at that time. He continued: "From the inconvenience of that adjournment the court has hardly yet recovered. In New York City, where the courts are practically in session during the whole year, arrears. I their rent, In this district, the pay of the court officers is several months in am informed that some of them, being unable to pay have been turned into the streets by their landlords.

the marshal has several times been compelled to borrow money in order to hold a term of court, or has given the jurors and witnesses vouchers which they have negotiated at local banks at ruinous rates of discount.¹⁵⁶

This unusual grand jury charge was concluded in these words: "It is possible that this treatment grows out of indifference, or lack of information on the part of those in the legislative and executive branches of the Government. Such treatment is surely unbecoming a great and powerful nation, and it is possible that your presentment may call attention to the subject, and result in a more liberal policy in the future.¹⁵⁷ After hearing this charge and taking the testimony of the United States Attorney, the marshal and the various clerks, the presentment of the grand jury was made. It should come as no surprise that the grand jury recommended that all the deficiencies commented on by Judge Coxe be rectified. In addition, the grand jury recommended that stationery be purchased and that badges be provided to the bailiffs. Interestingly, the final recommendation included in the presentment was for "enactment of such other laws as may be necessary to place the courts of the United States upon equal footing with the Supreme Court of this State, regarding the facilities for the transaction of business.¹⁵⁸

While it cannot be said that Congress is as penurious today as it was in 1895, there are some items that could be provided to promote efficiency and advance the work of our court. I am in the process of drafting a grand jury charge beginning something~ like this: "Ladies and Gentlemen, Westlaw is a system for computerized legal research essential to the work of the Northern District."

Time does not permit me to review all the writings of Judge Coxe. I do commend to your attention three articles published in the Columbia Law Review: The Trials of Jury Trials,¹⁵⁹ dealing with jury problems and suggesting reforms such as non-unanimous verdicts, elimination of juries in certain cases and punishment of those who discharge employees for serving as jurors; In Marshall's Day and Ours,¹⁶⁰ a discussion of the work of John Marshall and the changes in the work of the courts since Marshall's time, with a criticism of excessive briefing by lawyers and opinion writing by judges; and Overproduction of Law,¹⁶¹ a protest against unnecessary legislative lawmaking. In the last article, Judge Coxe wrote: "Under the conditions which now prevail no subject is too sacred or too trivial to escape the bungling hand of the legislative tinker."¹⁶² In the same article he wrote: "We have yet to learn that there are some inconveniences, annoyances and even faults which cannot be remedied by law."¹⁶³ He should see us now!

In 1902, by appointment of President Theodore Roosevelt, Judge Coxe joined Judge Wallace on the new Circuit Court of Appeals, where he served until his retirement in 1917.¹⁶⁴ The reports are full of District Court, Court of Appeals I, he enjoined a torpedo invented Circuit Court and Circuit opinions by Judge Coxe. Just before World War manufacturer from selling abroad the plans for by a naval officer and assigned to the United States Government.¹⁶⁵ His humor always shone through his opinions. In a case involving an automobile horn, he held that plaintiff's device was anticipated by prior patents and found that "a noise, as such, is not patent able."¹⁶⁶

The death of Judge Coxe in 1923 did not end the Conkling-Coxe line in the federal judiciary. His son, Alfred Conkling Coxe, Jr., was appointed a District Judge in the Southern District by President Hoover in 1929. Although he was born in Utica and practiced law there for a time, Alfred Coxe Jr. went to New York City. I suppose that every family has a problem child. At any rate, he practiced here until his appointment to the bench and presided over many important trials during his term of service until his retirement in 1951. He carried his father's sense of humor and was greatly admired by the lawyers who practiced before him. He died in 1957 at the age of seventy-seven, the last in a line of great Judges and statesmen.¹⁶⁷

The New York Times, a provincial publication if ever there was one, reported the death of the seventh Judge of the

Northern District on January 10, 1925 with the following headline: "Federal Judge Ray, 'Farmer Judge,' Dead."¹⁶⁸

While it is true that George Washington Ray was brought up on a farm and that he was a farm owner for most of his adult life, his obituary certainly rated a more descriptive title. Judge Ray read law with an attorney named Prindle at Norwich in Chenango County after service as a brigade clerk during the final year of the Civil War. Following admission to the bar, he practiced law in Norwich and became county Republican chairman of Chenango County and chairman of the state Republican committee. He gained eminence as a criminal lawyer in the Norwich area.¹⁶⁹ One might say that he was world famous in Chenango County while in private practice. For those of you who are deficient in the geography of the Northern District, Norwich Broome County, where our Court time lies to the north of Binghamton in still holds sessions from time to time. George W. Ray was elected to the 48th Congress and to the 52nd and five succeeding Congresses. He served as chairman of the Judiciary Committee and was instrumental in the passage of the bankruptcy laws. He gave important speeches in the House concerning the war over Cuba,¹⁷⁰ the Military Pension Act,¹⁷¹ the World's Columbian Exposition,¹⁷² and the annexation of Hawaii.¹⁷³ In a letter to then Governor Theodore Roosevelt, his life-long friend, he declined the offer of an appointment to the State Supreme Court bench in 1899, contending that it was necessary for him to remain in Congress to deal with the "new and perplexing problems growing out of the recent successful war with Spain, especially those relating to the government of Cuba and the control of the Philippine Islands."¹⁷⁴ In 1902, however, after Roosevelt became President, he accepted appointment to the Northern District Bench to succeed Judge Wallace.

Judge Ray's career on the Bench has been characterized as a stormy one. In 1905 the Solicitor General severely criticized him for delaying a decision for fifteen months in connection with the criminal prosecution of ex-Senator George F. Green. In 1911 the Bar Association of Cayuga County asked the House Judiciary Committee to investigate Judge Ray for "coarse, irascible and domineering conduct in the courtroom."¹⁷⁵ In 1917 the Judiciary Committee was requested to impeach Judge Ray by Henry A. Wise, a former United States Attorney. Mr. Wise had represented a broker named Max Hart whose criminal conviction before Judge Ray was reversed on appeal. The request was

accompanied by charges of favoritism, ex-parte communications with attorneys, allowing the squandering of bankruptcy assets and assuming the functions of the prosecuting attorney in criminal cases.¹⁷⁶ Judge Ray's proclivity for questioning witnesses may have given rise to the lawyers' traditional rejoinder: "I don't mind if you question my witness, Judge, but don't lose the case for me."

The most bizarre controversy in which Judge Ray's conduct was called into question involved the prosecution of a Syracuse attorney named John A. Tolishus for violation of the Sedition Laws at the inception of American involvement in World War I. Tolishus had been the office manager of the law firm of George H. Bond and Lieutenant Governor Edward Schoeneck. He was a naturalized American citizen, born in Germany, and a graduate of Syracuse Law School. Certain Syracuse attorneys accused him of making seditious remarks to them and to others, and he was indicted by a grand jury. After the indictment, a meeting was held in Judge Ray's Chambers with Tollsbus, Lieutenant Governor Schoeneck, certain complaining witnesses and the U.S. Attorney. Shortly after the meeting, the indictment was recalled. An enormous public controversy ensued, resulting in the presentation of the matter to a new grand jury. A new indictment was returned, and Tolishus entered a plea of guilty to six counts after the denial of his motion to dismiss based on unconstitutionality. Judge Ray sentenced him to serve fifteen months and to pay a fine of \$100.¹⁷⁷ It is questionable whether the indictment would have survived the motion today.

For all the complaints about Judge Ray, no action of any kind ever was taken against him. He pursued his judicial duties with diligence and devotion until he suffered partial paralysis as the result of a stroke at the age of seventy-five. The newspaper report of his illness included these words: "He is known as one of the hardest working jurists on the bench and intimates say he has not taken a vacation in twenty years."¹⁷⁸ He died on January 10, 1925 at the age of eighty-one. His Times obituary referred to his habit of "burning the candle at both ends of the day" and concluded with the following observation: "Some of the greatest patent cases of the country were heard by Judge Ray, whose decisions were never reversed by upper courts in these matters. He was frequently called into other districts for the trial of cases."¹⁷⁹

The Roaring 20's roared into Northern New York with a vengeance. Enforcement of the eighteenth amendment and the Volstead Act increased the work of the Northern District to an extent previously unknown. Judge Frank Cooper was confronted with a massive caseload at the outset of his judicial service. He had studied law in the office of Charles E. Palmer in Schenectady, where he practiced before assuming the office of Corporation Counsel of that city, a position that he held at the time of his appointment to the Bench by President Wilson in 1920. Although he was active in Democratic politics and served as a member of the Democratic state committee, there was opposition to his appointment because of his service as Corporation Counsel under Mayor George R. Lunn during Lunn's first term as a Socialist mayor. He held Bachelor's and Master's degrees from Union College and lived in Albany, where he maintained chambers, during his term of judicial service.¹⁸⁰

A new industry was created by Prohibition -- the illegal transportation of liquor across the Canadian border -- and the Northern District was in session night and day to deal with the executives and employees of these new business enterprises. A contemporary newspaper reported that Judge Cooper "has the reputation of being the hardest-working Judge anywhere around. He keeps going nearly all the time, and holds frequent night sessions. He holds special 'booze terms' of a day or so at which those who have been caught can come and take their sentence."¹⁸¹ The New York Times of January 4, 1925 included a report of Judge Cooper's work on that day as follows: "Fines aggregating \$24,651 were today imposed on violators of the Volstead Act in Federal Court by Judge Frank Cooper. More than 200 defendants, including several women, were arraigned on charges of infractions of prohibition laws and illegal entry into the United States."¹⁸² The fines imposed in the Northern District approached one and a quarter million dollars in each of the years 1925 and 1926.¹⁸³ The increased workload resulted in the Act of March 3, 1927, creating a second judgeship in the Northern District.¹⁸⁴ It was not until 1978 that a third judgeship was added.¹⁸⁵ It appears that Judge Cooper may have opposed the second judgeship bill, since he made a public statement "that he could take care of the work by himself."¹⁸⁶

Many precedents were established as the result of Prohibition litigation in the Northern District. In McGuire v. United States,¹⁸⁷ the Supreme Court held that the illegal destruction of liquor found by agents in the Northern District acting

under a search warrant did not void the search or render inadmissible the samples retained as evidence. In Gambino v. United States,¹⁸⁸ the Supreme Court was confronted with the seizure of an automobile containing liquor and the arrest of its occupants in the Northern District by a state police officer. The Court held that the fourth and fifth amendment rights of the defendants were violated and that the evidence seized was inadmissible, even though seized by a state officer, since the officer was acting solely in aid of the enforcement of the laws of the United States. Rules relating to the confiscation of automobiles used to transport illicit whiskey were developed as the result of Northern District litigation as were other rules dealing with the interpretation and application of the Volstead Act.¹⁸⁹

In spite of Prohibition, roadhouses and speakeasies flourished in upstate New York, and whiskey never seemed to be in short supply. One legendary member of the Northern District Bar who defended those charged with Prohibition violations consumed more than his share. It was said that he would drink a toast to a laundry list. It was also said that, if there were a nip in the air, he would drink it. On one occasion he appeared before a Southern District Judge in an intoxicated condition. When the Judge said: "You are drunk," he replied: "That is the only correct judgment your honor has made in some time." Supplying the alcohol needs of the population in the days of Prohibition obviously was a lucrative business. While Dutch Schultz and Legs Diamond fought over control of the trade in Northern New York,¹⁹⁰ the wets and the dries continued to battle it out on the political field. Into this political battle, Judge Frank Cooper was drawn in a strange situation involving a call for his impeachment.

The call was issued by Congressmen LaGuardia and Celler, who were not too keen on Prohibition in the first place. They charged that Judge Cooper had advised and assisted government agents in the conduct of undercover operations designed to entrap border rumrunners. An extensive investigation was conducted, and the Judiciary Committee was authorized by the House to conduct a formal inquiry. Witnesses were called, and Judge Cooper himself appeared before the Committee. The proceedings were marked by extensive wrangling between Chairman Graham and Congressman LaGuardia. It did develop that Judge Cooper injudiciously had discussed with government agents, both orally and in writing, methods of securing evidence against so-called However, it also appeared that the Judge had no

of any specific undercover operations "higher-ups." prior knowledge. During the investigation, there was a break-in at Judge Cooper's Chambers in Albany, and a certain file of correspondence was ransacked. Dean Taylor, Judge Cooper's secretary, who would become a distinguished Congressman and State Republican Party Chairman, advised the press that the ransacked file contained letters that might have a bearing on the hearings. He indicated that some of the letters were stolen and implied that some had been published.¹⁹¹ The Times reported that this statement had a "disquieting" effect on Mr. LaGuardia, who denied any knowledge and made this further statement: "At any rate, what business has a Judge to have letters in his file that cannot be published?"¹⁹² It seems in any event that all letters pertinent to the investigation finally were produced and that all necessary witnesses were heard.¹⁹³ The Judiciary Committee found no basis for impeachment, although the Committee said that its report was not to be taken as an approval of Judge Cooper's activities "with relation to the manner of procuring evidence in cases which would come before him for trial."¹⁹⁴

The Committee report was approved by the House without opposition.¹⁹⁵ Judge Cooper's troubles were a rallying point for the wets and the dries. For example, Rev. A.D. Batchelor, at a forum sponsored by the Anti-Saloon League in New York City on February 13, 1927, made the following statement: "The efforts of a few garrulous wets in Congress, who have requested impeachment proceedings against Judge Cooper is not without significance. What are the facts? No Judge in New York has been a greater terror to the rumrunners than Judge Cooper. His summary exercise of jurisdiction in the north country has earned for him the enmity of the Wets. His removal from office would be a victory for the bootleggers. Instead of seeking to remove him, Congress ought to uphold him and commend him."¹⁹⁶ I guess it depends on which side you Preferred.

Frank Cooper retired in 1941 and died in 1946, having survived by some years the abolition of the laws that occupied him for so long. Toward the end of his service, according to some Albany lawyers, Judge Cooper developed the eccentricity of holding motion days in his bedroom. Not a bad ideal of boyhood in Elizabethtown, New York, -- Augustus N. Hand. This appointment was to fill the vacancy created by the death of Charles Hough, the hitherto

unchallenged historian of the Southern District. Cousin Learned, who practiced law unsuccessfully in Albany¹⁹⁷ and taught at Albany Law School, had been appointed to the Circuit Bench three years earlier. On the same day that he appointed Augustus, Coolidge appointed another north country man to the Federal Bench -- Frederick H. Bryant of Malone. On May 21, 1927, reportedly at the urging of several members of the United States Supreme Court, President Coolidge appointed the Second Circuit Court of Appeals a man who had spent his Malone. That appointment reportedly was urged by the Republican National Committeeman from New York, although it evoked a controversy among the wets, dries and "bone-dries."¹⁹⁸ It seems only fortuitous that Bryant had served for many years as Franklin County Republican Chairman before his nomination. His wife and law partner was appointed vice-chairman to his successor in that position. Later, Mrs. Bryant became law secretary to her husband.¹⁹⁹

Judge Bryant was a graduate of Middlebury College and studied law in the office of Gordon Main, with whom he became associated in the practice of law at Malone. He joined Judge Cooper on the Northern District Bench as the first appointee to the second judgeship created in the Northern District.²⁰⁰ He presided at the Binghamton trial of eight of the members of the nation's last organized kidnap ring.²⁰¹ The eight men were convicted for the kidnapping of John J. O'Connell, Jr., who was held by the kidnapers for twenty-three days. The victim was released upon payment of the ransom money by his uncle, Daniel P. O'Connell, the Albany County Democratic Leader.²⁰² Judge Bryant also presided in several Indian cases and, in 1929, determined the selection of Chief Sachem of the Iroquois Confederacy.²⁰³

By far 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. The trials received extensive press coverage, since Schultz was one of the most widely known racketeers of his day. Accused of failing to pay income tax on his ill-gotten gains, Schultz first was tried at Syracuse after indictment by a federal grand jury at Albany. Apparently, the Northern District venue was due to the location of the internal revenue district appropriate to the Schultz residence. Although the evidence disclosed that the Schultz operations grossed millions of untaxed dollars each year, the Syracuse trial ended with a hung jury. According to reports, the defense overcame the allegation of

willfulness by demonstrating that Schultz emissaries had traveled to Washington to offer payment of \$100,000 to revenue officers in settlement of all claims, an offer that was rejected.²⁰⁴

The government continued to refuse offers of a civil compromise, and a new trial was ordered at Malone, where Judge Bryant maintained his chambers.²⁰⁵ Evidently, the "Dutchman" cut a dashing and glamorous figure among the rural residents of Franklin County. According to newspaper dispatches, he spent the week before the start of his trial "ingratiating himself with the local citizenry by lordly spending. He had played the genial host in roadhouses and night clubs, bought wassail for any and all who would partake of it and even, according to common report, sent juvenile books to a child ill in a local hospital."²⁰⁶ An alarmed Judge Bryant revoked bail, remainder of acquitted of District.²⁰⁷ and the defendant spent the his trial in jail. On August 1, 1935, Schultz was all charges of income tax evasion in the Northern The New York Times banner headline of August 2nd read: "Schultz Is Freed; Judge Excoriates Jury Of Farmers."²⁰⁸ The Times seems to consider that farming is the proper occupation of all those who reside north of the Bronx. Obviously, all twelve jurors were not farmers. Judge Bryant's final words to the jurors were these: "You will go home with the satisfaction, if it is a satisfaction, that you have rendered a blow against law enforcement and given aid and encouragement to the people who would flout the law. In all probability they will commend you. I cannot. The Clerk will give you your vouchers."²⁰⁹ Lloyd McMahon gave a similar tongue lashing to a jury in a similar case at Auburn last year.

Less than three months after his acquittal, Schultz was shot to death at a tavern in Newark, New Jersey.²¹⁰ I believe that it was Judge Bryant who said to a Prohibition violator: "You have been brought before me twelve times in twelve months for violations of the Volstead Act. What do you have to say?" The reply was: "Your Honor, I can't help it if you're not promoted."

The District admired, service rendered by Stephen W. Brennan on the Northern Bench will long be remembered. He was a man greatly even revered, both as a lawyer and as a Judge. He practiced law in Utica after his graduation from Albany Law School and served as Democratic County Chairman of Oneida County before his appointment to the

Bench by President Franklin Roosevelt in 1942.²¹¹ As an attorney, it was said that "He was of unquestionable integrity, an able advocate in the courtroom, a wise counsellor, a man with a mind that penetrated quickly and instinctively to the real issues involved and a sagacious adviser."²¹² Of his judicial service, Chief Judge Lumbard said: "The Court of Appeals not only thought highly of his experience and judgment during his twenty-six years of judicial service, but on numerous occasions he was called to sit as a member of this Court and on still other occasions he sat in other district courts when help was needed. He was esteemed by all his colleagues for his wisdom and good judgment and for his attractive and friendly personality."²¹³ In the tradition of Northern District Judges he was a prodigious worker and continued his judicial labors as a Senior Judge practically until the date of his death on April 9, 1968 at the age of seventy-six. Among those who attended his memorial service at the United States Courthouse in Utica was New York Supreme Court Justice Richard Cardamone, now a Judge of the Circuit Court with Chambers in Utica. I'm not sure whether it was Judge Brennan who told a young couple on a Friday afternoon that he was unable to perform a marriage ceremony and then was met with the following request: "Your Honor, could you say a few words to tide us over the weekend?"

From 1946-1948, Judge Edward S. Kampf served on the Northern District Bench at Albany. He was appointed to replace Judge Bryant and had served as Albany Police Court Judge for about five years prior to his appointment.²¹⁴ According to those familiar with the situation, Judge Kampf found the work somewhat different from his Police Court duties, decided he didn't want to get involved and handed in his resignation two years after his appointment. His replacement was James Thomas Foley, a native of Troy, appointed by President Truman in 1949 at the tender age of thirty-nine.²¹⁵ From the date of his appointment until my arrival thirty-two years later, Judge Foley was the only Federal Judge with Chambers in the State Capital. I have never met a person more capable of, or more suited for, the work of judging, and my daily association with him has been a source of great joy for me. I shall always treasure his guidance and friendship. As District Judge, Chief Judge and now Senior Judge, he has been at the cutting edge of significant changes in the law. Judge Foley has made enormous contributions to the law of prisoners' rights,²¹⁶ and, in 1979, he

established hiring goals for minorities and women in the New York State Police.²¹⁷ A concise history of Saratoga Springs, including a description of its racetrack, can be found in his scholarly opinion in the Saratoga Vichy trademark case.²¹⁸ His interest in improving the breed continues, and I know that many here have joined Jim Foley and his lovely wife Eleanor in their box at the Saratoga Track on an August afternoon to join in the cry of "they're off."

Our second Senior Judge is Edmund Port of Auburn, that Northern District city of great lawyers and judges. After important service to the Northern District as Assistant United States Attorney and then United States Attorney, Judge Port was appointed to the Bench by President Johnson in 1964.²¹⁹ He continues to undertake a full load of prisoners' cases and is our resident expert in equity matters and Indian rights litigation. With 10,000 state Prisoners and 500 federal prisoners presently residing in the Northern District, we are grateful for Judge Port's continuing interest in habeas corpus and conditions of confinement. His expertise, acquired over long years of service, always is available to the active Judges, and he is acknowledged as one of the finest Judges ever to serve in the Northern District. I make no comment on the judicial service of the present active Judges, Munson, McCurn and Miner, leaving that for a future court historian.

From the Northern District of New York came two presidents, Fillmore²²⁰ of Locke, and Van Buren²²¹ of Kinderhook, who served as Surrogate of Columbia County. There also was one would-be president, Samuel J. Tilden²²² of New Lebanon, Columbia County, who won the popular vote but lost in the electoral college. From Northern New York there also came three associate justices of the United States Supreme Court, all with prior service on the New York State Bench -- Nelson²²³ of Cooperstown, Hunt²²⁴ of Utica, and Peckham²²⁵ of Albany. Chief Justice Charles Evans Hughes²²⁶ was born at Glens Falls and taught at Cornell Law School, one of the three law schools²²⁷ of the Northern District. There have been sixteen Judges of the United States District Court for the Northern District of New York and five currently are in service.²²⁸

Our Court started out as one of very limited jurisdiction, serving a small population. Today, there are more than three and one-quarter million inhabitants in the Northern District, and the matters within our jurisdiction are beyond the

wildest imagination of Judge Tallmadge. We stagger under a civil caseload of more than 800 cases per active judge and an increase in filings of 140% in the past five years.²²⁹ The Subcommittee on Judicial Statistics of the Judicial Conference has recommended two additional judges to meet this burden.²³⁰ We cannot return to an earlier day, but we must take some lessons from the past. Every silly dispute cannot be allowed to become grist for the federal court mill. Judge Coxe that there are some things that The constant enlargement of the told us, seventy-five years ago, just cannot be remedied by law of federal judiciary to accommodate an ever-expanding jurisdiction can lead to problems and difficulties now unforeseen. I suggest that the time has come for Congress to answer these questions: What is expected of the District Courts? What should be the priorities? How much growth is desirable? What present jurisdiction Can be divested? I also suggest some soul-searching on the part of those appellate judges who continue to probe the outer limits of federal judicial power.

I close on a note of optimism with regard to the survival of the Northern District. On March 19, approximately three weeks ago, the Supreme Court granted cert. in the Oneida Indian Nation case.²³¹ I am sure that, whatever the outcome of that controversy, the eldest child of the Mother Court will endure, with pride in its past and with hope for its future.

FOOTNOTES

1. 719 F.2d 525 (2d Cir. 1983), aff'g, 434 F. Supp. 527 (N.D.N.Y. 1977), cert. granted, 52 U.S.L.W. 3678 (U.S. Mar. 20, 1984) (Nos. 83-1065, 83-1240). See also Oneida Indian Nation v. New York, 520 F. Supp. 1278 (N.D.N.Y. 1981), aff'd in part, rev'd in part and remanded, 691 F.2d 1070 (2d Cir. 1982).

2. Christopher J. Schuberth, The Geology of New York City and Environs 180 (1968).

3. William J. Miller, The Geological History of New York State 89 (1970).

4. There is controversy concerning the origin of the North American Indians, but at present this is the most commonly accepted theory.

5. Deganawida, a Huron, and Hiawatha (no relation to Longfellow's fictional character), an Onondaga, were adopted by the Mohawks.

6. Barbara Graymont, The Iroquois in the American Revolution 14-16 (1972); see generally Allen W. Trelease, Indian Affairs in Colonial New York (1971).

7. Michael Kammen, Colonial New York: A History 11 (1975).

8. Id. at 12; see generally Arthur C. Parker, The Constitution of the Five Nations (1916).

9. The Iroquois and the Algonquins constituted the two linguistic stocks found in New York State. There were numerous tribes within these stocks and not all Iroquois speaking tribes were members of the Confederacy. See generally William Beauchamp, A History of the New York State Iroquois (1905).

10. 1 Alden Chester, Courts and Lawyers of New York -- A History 1609-1925, at 24-25 (1925).

11. Id. at 28-29.

12. Marshall B. Davidson, New York 5 (1977).

13. M. Kammen, supra note 7, at 32-33.

14. Carl Carmer, The Hudson 236-54 (3d ed. 1968).

15. 1 A. Chester, supra note 10, at 83; see also Peyton F. Miller, A Group of Great Lawyers of Columbia County 214-64 (1904).
16. Rensselaerwyck was composed of the present Northern District counties of Albany, Columbia, Delaware, Greene, and Rensselaer.
17. 1 A. Chester, supra note 10, at 236-39; Becker, Mr. Adriaen Van der Donck -- The Earliest Lawyer in New York, 66 Albany L.J. 46-51 (Jan. 1904 - Jan. 1905).
18. M. Kammen, supra note 7, at 46.
19. 1 A. Chester, supra note 10, at 301-06.
20. M. Davidson, supra note 12, at 5-6.
21. 1 A. Chester, supra note 10, at 400-08.
22. M. Kammen, supra note 7, at 128-29.
23. Id. at 129 (quoting Calendar of Treasury Papers at 327).
24. History of the County of Albany, N.Y. -- From 1609 to 1886, at 125 (G.R. Howell & J. Tenney eds. 1886).
25. Id.
26. Id.
27. 3 A. Chester, supra note 10, at 979-81.
28. History of the County of Schenectady, N.Y. -- From 1662 to 1886, at 24-28 (G.R. Howell & J. Tenney eds. 1886).
29. M. Davidson, supra note 12, at 6.
30. 3 A. Chester, supra note 10, at 981.
31. 1 History of the Bench and Bar of New York 91 (D. McAdam ed. 1897).
32. The American Revolution in New York 167 (A. Flick ed. 1967).
33. M. Davidson, supra note 12, at 7.

34. The American Revolution in New York, supra note 32, at 229-30.
35. 2 A. Chester, supra note 10, at 644.
36. N.Y. Jud. Law § 140-b (McKinney 1983).
37. 2 A. Chester, supra note 10, at 635.
38. Id. at 649.
39. See Gordon S. Wood, The Creation of the American Republic -- 1776-1787 (1969).
40. The American Revolution in New York, supra note 32, at 230-31.
41. Address by Judge Jose A. Cabranes, Notes on the History of the Federal Court of Connecticut, (Apr. 21, 1983), reprinted in Second Circuit Redbook 678, 681-82 (1984).
42. 1 Annals of Cong. 89-93 (Gales & Seaton eds. 1834).
43. Judiciary Act of September 24, 1789, 1 Stat. 73.
44. See H. Paul Burak, History of the United States District Court for the Southern District of New York 1 (1962) (published by the Federal Bar Council) (available in Federal Archives and Records Center, Bayonne, N.J.).
45. History of the County of Schenectady, supra note 28, at 161-62.
46. Historic Towns of the Middle States 76 (L. Powell ed. 1899).
47. Dictionary of American Biography 465-66 (A. Johnson ed. 1928).
48. 6 Appelton's Cyclopedia of American Biography 26 (J.G. Wilson & J. Fiske eds. 1887).
49. Bicentennial Committee of the Judicial Conference of the United States, Judges of the United States 480 (2d ed. 1983) [hereinafter cited as Judges of the United States].
50. 6 Appleton's Cyclopedia of American Biography, supra note 48, at 26.

51. See P. Miller, supra note 15, at 104-13.
52. Paul Wilstach, Hudson River Landings 280-83 (1969).
53. 6 Appleton's Cyclopedia of American Biography, supra note 48, at 26; Judges of the United States, supra note 49, at 480.
54. Act of April 29, 1812, 2 Stat. 719.
55. Charles Merrill Hough, The United States District Court for the Southern District of New York 17 (1934).
56. P. Miller, supra note 15, at 128-29.
57. 3 A. Chester, supra note 10, at 1021.
58. Dictionary of American Biography, supra note 47, at 202-03.
59. C. Hough, supra note 55, at 18.
60. Yearbook -- Supreme Court Historical Society 1978, Collision Among the Judges 109 (1978).
61. Act of April 9, 1814, 3 Stat. 120-21.
62. Id.
63. H. Burak, supra note 44, at 16.
64. Act of February 25, 1865, 13 Stat. 438.
65. Act of May 12, 1900, 31 Stat. 175.
66. Act of April 3, 1818, 3 Stat. 413.
67. Act of May 12, 1900, 31 Stat. 175.
68. Act of October 2, 1978, 92 Stat. 883.
69. Act of April 9, 1814, 3 Stat. 120-21.
70. H. Burak, supra note 44, at 9-11.
71. Id.

72. Act of Feb. 13, 1801, 2 Stat. 89.
73. Act of Mar. 8, 1802, 2 Stat. 132.
74. Act of Feb. 13, 1801, 2 Stat. 89.
75. Act of Mar. 3, 1815, 3 Stat. 235.
76. Bayonne, N.J., Federal Archives and Records Center, (Common Rule Books -- Northern District of New York 1812-1860, 4 vols.) Record Box 1126.
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79. Ontario, Canada, Public Archives Canada, (Letter James Crooks to William Holton, West Flamborough, December 23, 1815), RG5, A-1, 25:11290-92.
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83. Statement of the Seizure of the British Schooner Lord Nelson by an American Vessel of War -- 5th June 1812, at 14 (1841) (pamphlet) (available in Journal and Express Office, Hamilton, Ontario) [hereinafter cited as Schooner Lord Nelson].
84. Id.
85. Id.
86. Id. at 15.
87. Act of April 3, 1818, 3 Stat. 413.
88. Schooner Lord Nelson, supra note 83, at 15.
89. Id. at 15-16.

90. Cain, supra note 77, at 126.
91. Id. at preface.
92. Judges of the United States, supra note 49, at 454.
93. Act of April 3, 1818, 3 Stat. 413.
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95. Act of July 7, 1838, 5 Stat. 295.
96. Id.
97. Act of March 24, 1860, 12 Stat. 2.
98. General Rules United States District Court
N.D.N.Y. R. 17.
99. Act of July 4, 1864, 13 Stat. 385.
100. Act of May 12, 1900, 31 Stat. 175.
101. Act of August 12, 1937, 50 Stat. 623.
102. Dictionary of American Biography, supra note 47, at 345-46.
103. 3 A. Chester, supra note 10, at 1126.
104. Biographical Directory of the American Congress 838-39 (1928) [hereinafter cited as Biographical Directory].
105. C. Hough, supra note 55, at 24.
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108. Alfred Conkling, The Powers of The Executive Department of the Government of the United States (Albany 1866).

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121. Biographical Directory, supra note 104, at 839.
122. A.R. Conkling, supra note 114, at 13.
123. Id. at 39-40.
124. 1 Appleton's Cyclopedia of American Biography, supra note 48, at 706-07.
125. 3 A. Chester, supra note 10, at 1376-77.
126. Dictionary of American Biography, supra note 47, at 346-47.

127. 2 Rossiter Johnson & John Howard Brown, The Twentieth Century Biographical Dictionary of Notable Americans (1968) (unpaginated) [hereinafter cited as Johnson & Brown].
128. Speech by James O. Putnam, Nathan Kelsey Hall (Mar. 30, 1874) reprinted in 4 Publications of the Buffalo Historical Society 285-94 (1896) [hereinafter cited as Putnam].
129. 6 The National Cyclopedia of American Biography 183 (1937) [hereinafter cited as National Cyclopedia].
130. N.Y. Times, Mar. 3, 1874, at 4, col. 6.
131. Second Circuit Historical Committee and Federal Bar Council, Slavery and the Federal Courts -- A Paradox of Roles 16 (Apr. 15, 1983).
132. 3 F. Cas. 159 (N.D.N.Y. 1862) (No. 1292).
133. 71 U.S. (4 Wall. 2) 108 (1886).
134. N.Y. Daily Tribune, Sept. 24, 1862, at 1, col. 6; id., Sept. 26, 1862, at 1, col. 5.
135. 4 Putnam, supra note 128, at 291-92; see, e.g., Goodyear v. Toby, 10 F. Cas. 725 (C.C.N.D.N.Y. 1868) (No. 5,585); The Forest Queen, 9 F. Cas. 448 (N.D.N.Y. 1869) (No. 9,438).
136. Bayonne, N.J., Federal Archives and Records Center, (Susan B. Anthony -- Indictment for Illegal Voting, Record of Conviction, Clerk's report, execution and Marshal's return), Record Box 308.
137. Id.
138. Id.
139. 4 Putnam, supra note 128, at 297.
140. Dictionary of American Biography, supra note 47, at 141.
141. See 17 National Cyclopedia, supra note 129, at 316.
142. N.Y. Times, Apr. 5, 1874, at 10, col. 3 (quoting The Syracuse Journal).
143. 3 A. Chester, supra note 10, at 1146.

144. United States v. Farrington, 5 F. 343 (N.D.N.Y. 1881).
145. 1 History of the Bench and Bar of New York, supra note 31, at 263.
146. 1 New York State Men -- Biographic Studies and Character Portraits 174 (Frederick S. Hills ed. 1910).
147. N.Y. Times, Mar. 28, 1917, at 13, col. 3.
148. Id., May 30, 1907, at 7, col. 3.
149. Id., Jan. 11, 1907, at 2, col. 1.
150. Id.
151. Judges of the United States, supra note 49, at 109-10.
152. Bayonne, N.J., Federal Archives and Records Center, (litigation files N.D.N.Y.), Record Boxes 488, 498 & 525.
153. Bayonne, N.J., Federal Archives and Records Center, (Edison patent files), Record Boxes 584 & 585.
154. Charge of Hon. Alfred C. Coxe to the Grand Jury at a United States District Court held at Utica, New York, March 19, 1895 and Presentment of the Grand Jury, (available in Archives of New York State Library, Law Pamphlets 734-752).
155. Id.
156. Id.
157. Id.
158. Id.
159. Alfred C. Coxe, The Trials of Jury Trials, 1 Col. L. Rev. 286 (1901).
160. Alfred C. Coxe, In Marshall's Day and Ours, 3 Col. L. Rev. 88 (1903).
161. Alfred C. Coxe, Overproduction of Law, 6 Col. L. Rev. 102 (1906).
162. Id. at 108.

144. United States v. Farrington, 5 F. 343 (N.D.N.Y. 1881).
145. 1 History of the Bench and Bar of New York, supra note 31, at 263.
146. 1 New York State Men -- Biographic Studies and Character Portraits 174 (Frederick S. Hills ed. 1910).
147. N.Y. Times, Mar. 28, 1917, at 13, col. 3.
148. Id., May 30, 1907, at 7, col. 3.
149. Id., Jan. 11, 1907, at 2, col. 1.
150. Id.
151. Judges of the United States, supra note 49, at 109-10.
152. Bayonne, N.J., Federal Archives and Records Center, (litigation files N.D.N.Y.), Record Boxes 488, 498 & 525.
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155. Id.
156. Id.
157. Id.
158. Id.
159. Alfred C. Coxe, The Trials of Jury Trials, 1 Col. L. Rev. 286 (1901).
160. Alfred C. Coxe, In Marshall's Day and Ours, 3 Col. L. Rev. 88 (1903).
161. Alfred C. Coxe, Overproduction of Law, 6 Col. L. Rev. 102 (1906).
162. Id. at 108.

163. Id. at 105.
164. Chase, supra note 94, at 59.
165. N.Y. Times, June 9, 1915, at 9, col. 2.
166. N.Y. Times, June 19, 1914, at 12, col. 6.
167. See generally 48 National Cyclopedia, supra note 129, at 308; N.Y. Times, Jan. 12, 1951, at 20, col. 4; id., Dec. 22, 1957, at 40 col. 3.
168. N.Y. Times, Jan. 10, 1925, at 13, col. 5.
169. 9 Johnson & Brown, supra note 127; 2 National Cyclopedia, supra note 129, at 133.
170. 31 Cong. Rec. 4444 (1898).
171. Id. at 6760.
172. 23 Cong. Rec. 6378 (1892).
173. Judges of the United States, supra note 49, at 408.
174. N.Y. Times, July 29, 1899, at 1, col. 5.
175. Id., July 14, 1918, at 1, col. 1.
176. Id., Apr. 6, 1917, at 15, col. 1.
177. Id., July 29, 1899, at 1, col. 5; id., July 15, 1918, at 11, col. 1; id., July 16, 1918, at 7, col. 1; id., July 17, 1918, at 1, col. 2; id., July 23, 1918, at 7, col. 3; id., July 24, 1918, at 11, col. 4; id., Sept. 18, 1918, at 6, col. 2; id., Sept. 19, 1918, at 11, col. 3.
178. Id., Aug. 30, 1919, at 7, col. 2.
179. Id., Jan. 10, 1925, at 13, col. 5; id., Sept. 14, 1924, at 31, col. 2.
180. 35 National Cyclopedia, supra note 129, at 486; N.Y. Times, Apr. 30, 1920, at 5, col. 2; id., June 4, 1920, at 11, col. 4.
181. N.Y. Times, Oct. 11, 1926, at 20, col. 5 (quoting The Utica Observer-Dispatch).

182. N.Y. Times, Jan. 4, 1925, at 20, col. 2.
183. See supra note 180.
184. Act of March 3, 1927, 44 Stat. 1374.
185. Act of October 20, 1978, 92 Stat. 1629.
186. See supra note 181.
187. 273 U.S. 95 (1927).
188. 275 U.S. 310 (1927).
189. N.Y. Times, Sept. 9, 1925, at 27, col. 2.
190. William Kennedy, O Albany, 189-210 (1983); see id., photograph nos. 26-29; see also Gary Levine, Anatomy of a Gangster -- Jack "Legs" Diamond 156-58 (1979).
191. N.Y. Times, Jan. 27, 1927, at 10, col. 4; id., Jan. 28, 1927, at 1, col. 2; id., Jan. 29, 1927, at 17, col. 7; id., Jan. 30, 1927, at 13, col. 3; id., Feb. 2, 1927, at 18, col. 4; id., Feb. 3, 1927, at 2, col. 3; id., Feb. 6, 1927, at 15, col. 5; id., Feb. 8, 1927, at 4, col. 4; id., Feb. 10, 1927, at 3, col. 6; id., Feb. 11, 1927, at 2, col. 6; id., Feb. 12, 1927, at 5, col. 1; id., Feb. 17, 1927, at 3, col. 5; id., Feb. 24, 1927, at 25, col. 2; id., Feb. 26, 1927, at 19, col. 3; id., Mar. 28, 1927, at 2, col. 2.
192. Id., Feb. 27, 1927, at 3, col. 3.
193. Id., Mar. 1, 1927, at 29, col. 1.
194. Id., Mar. 2, 1927, at 8, col. 1.
195. Id., Mar. 4, 1927, at 21, col. 2.
196. Id., Feb. 14, 1927, at 22, col. 5.
197. G. Edward White, The American Judicial Tradition 261 (1976).
198. N.Y. Times, May 3, 1927, at 29, col. 6; id., May 21, 1927, at 19, col. 3.
199. Id., Sept. 5, 1945, at 23, col. 1.

211. Judges of the United States, supra note 49, at 52.
212. In Memoriam, Hon. Stephen W. Brennan, 283 F. Supp. 5, 11 (1968).
213. Id. at 9 (quoting letter from Chief Judge Edward Lumbard).
214. N.Y. Times, Jan. 16, 1946, at 21, col. 2; id., Apr. 20, 1948, at 23, col. 7.
215. Chase, supra note 94, at 92.
216. E.g., Rodriguez v. McGinnis, 307 F. Supp. 627 (N.D.N.Y. 1969), rev'd, 451 F.2d 730 (2d Cir. 1971), rev'd, 456 F.2d 79 (2d Cir. 1972) (en banc) (affirming 307 F. Supp. 627), rev'd sub nom. Preiser v. Rodriguez, 411 U.S. 475 (1973); see also N.Y. Times, Feb. 27, 1972, at 59 col. 5.
217. United States v. New York, 475 F. Supp. 1103 (N.D.N.Y. 1979).
218. Saratoga Vichy Spring Co., v. Lehman, 491 F. Supp. 141 (N.D.N.Y. 1979), aff'd, 625 F.2d 1037 (2d Cir. 1980).
219. N.Y. Times, Sept. 7, 1951, at 31, col. 4; id., Oct. 17, 1951, at 19, col. 3; id., July 2, 1964, at 19, col. 5.
220. 3 Dictionary of American Biography 380-82 (A. Johnson & D. Malone eds. 1959).
221. P. Miller, supra note 15, at 1-16; History of the County of Albany, supra note 24, at 135-37.
222. See generally P. Miller, supra note 15, at 16-30; 1 History of the Bench and Bar of New York, supra note 31, at 498.
223. See 3 A. Chester, supra note 10, at 1372-75.
224. See id. at 1375-76.
225. See id. at 1377-78.
226. See id. at 1378-79.
227. Albany Law School of Union University, founded 1851; Cornell Law School of Cornell University, founded 1887; Syracuse Law School of Syracuse University, founded 1895.

228. Mathias B. Tallmadge (1805-19); Roger Skinner (1819-25); Alfred Conkling (1825-52); Nathan K. Hall (1852-74); William J. Wallace (1874-82); Alfred C. Coxe (1882-1902); George W. Ray (1902-25); Frank Cooper (1920-41); Frederick H. Bryant (1927-41); Stephen W. Brennan (1942-68); Edward S. Kampf (1946-48); James T. Foley (1949-); Edmund Port (1964-); Howard G. Munson (1976-); Neal P. McCurn (1979-); Roger J. Miner (1981-).

229. Administrative Office of the United States Courts, Federal Court Management Statistics 26 (1983).

230. Letter from Honorable Charles A. Moyer, Jr., Chairman Subcommittee on Judicial Statistics, to Honorable Howard G. Munson, Chief Judge, U.S. District Court, Northern District of New York (Jan. 13, 1984).

231. Oneida Indian Nation v. County of Oneida, 719 F.2d 525 (2d Cir. 1983), cert. granted, 52 U.S.L.W. 3678 (U.S. Mar. 20, 1984) (Nos. 83-1065, 83-1240).