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NOTES ON THE HISTORY OF THE FEDERAL COURT OF CONNECTICUT*

By José A. Cabranes**

Chief Judge Feinberg, Judge Oakes, Mr. Fiske, distinguished guests and friends:

I am honored and pleased to be here this afternoon. I am especially pleased because I think it is always salutary to remind New York residents, including judges and lawyers, that there is life (and law) on the far side of the Bronx. I say this, if I may indulge in a snippet of autobiography, as one who spent his childhood in that very borough, and his adolescence in furthest Queens, deep in the Eastern District, until I came, in the ripeness of years and by the grace of Kingman Brewster, and Abraham Ribicoff, to New Haven in the District of Connecticut. That being my personal odyssey, I like to look upon it as a progress of sorts.

This is the third of our Second Circuit Historical Lectures. The series can now be said to have something of a history of its own. In preparing these remarks on my own court in the District of Connecticut, I have looked to the lectures of Judge Weinfeld and Judge Nickerson in much the same way that one consults the authorities on a given point of law. Now and again, those lectures have provided me with precedent, but (in the fashion of our profession) from time to time I found it appropriate to distinguish the early cases.

For the District of Connecticut is rather different from its southern — and, as we shall see, junior — cousins. Midway between New York and Boston, Connecticut has been always in contact with the hurly-burly of the metropolis, but its residents have enjoyed a somewhat bucolic existence.

Such a central location has distinct advantages. Connecticut is the only place in the known world where the populace can with

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** United States District Judge for the District of Connecticut. I am pleased to acknowledge with gratitude the research assistance of (and my prolonged conversations with) Mr. David Bruce Goldin of the Connecticut Bar, my law clerk in 1982-1983. I benefited also from the collaboration of Mr. Arthur H. Aufses, III, of the New York Bar, my law clerk in 1981-1982; Mr. Donald S. Berry of the Massachusetts Bar; and Ms. Shelagh P. McClure of the Class of 1983 at the University of Connecticut Law School.

equanimity shift allegiance from the Yankees to the Red Sox, depending upon which team seems more likely to win the pennant.

And there are other advantages. In the absence of commercial distractions, Connecticut lawyers have proved an unusually scholarly lot. In the relatively small and traditional legal community of the state, one law school — Yale — has been able to play a greater role than it might have in a more complex, heterogeneous bar. Whatever the reason, Connecticut judges have always figured prominently on our Court of Appeals. Indeed, in the days of Judges Clark, Swan, and Frank, more of our appellate judges were commuting to work from the little town of New Haven than from all points in the Empire State combined.

Whatever the pace of its growth in later years, Connecticut was undeniably a fast starter, especially in matters of law. There is only one state that has seen fit to emblazon its dedication to the rule of law on the license plates issued by its Department of Motor Vehicles. With considerable, and I think justifiable, pride, Connecticut styles itself the "Constitution State."

That monicker derives from the early seventeenth century. Connecticut was settled under a "commission" from the Massachusetts General Court. The commission, in turn, created an entity it styled a "Judicial Court" authorized to legislate for the colony. By 1639, however, a self-constituted body of representatives elected by the adult male residents of the three towns settled under the commission had adopted what they called the "Fundamental Orders." The Fundamental Orders established an independent government for the settlements. The Orders were also the first document in the Western World to be written by a constituency as a description of the government under which they would actually live. In short, the first constitution.

Let me note in passing, though, that residents of the state are not known as "Constituters," "Constitutionalists," or "Constitution Staters." The nickname for them is "Nutmeggers." It seems — and I have as an authority for this proposition no less a personage than Mr. George Vaill, the former Associate Secretary of Yale University — that the early inhabitants of the state were known for commercial enterprise as well as dedication to law. It was undoubtedly a disgruntled New York merchant, outfoxed

by a Connecticut competitor, who originated the myth that traders from the north shore of the Sound were not above selling ostensible nutmegs that, upon close examination, proved to have been carved out of wood. I suppose we Nutmeggers can take comfort in the thought that, whatever suspicions that epithet suggests about our sharp dealing, it is surely an homage to our whittling abilities.

Having gotten into the business of producing law, Connecticut took easily to the business of producing lawyers. On South Street in the old town of Litchfield there still stands the twenty-by-twenty-foot building that housed this country's first law school. It was founded by Tapping Reeve, a young lawyer who came to Litchfield after obtaining his bachelor's degree from the College of New Jersey at Princeton — where he also obtained his wife, Sally Burr, who was the daughter of the college's president and the sister of Aaron Burr.

Reeve came to Litchfield in 1772. The next year, Aaron Burr gave up the study of theology and came to live with his sister and her husband. Burr took up the study of law under Reeve's roof and tutelage. Reeve must have enjoyed the experience of individual instruction. In the fashion of Yankee entrepreneurialism, he soon began to produce in quantity what he had successfully offered on a one-to-one basis. And so, when Burr finished his studies in 1775, he found himself, in effect, the first graduate of the Litchfield School of Law — and thus, of course, the first graduate of a law school in America.

An engaging speaker with an easy, nimble style, Reeve came to be well-known. In 1798 a young Litchfield graduate, James Gould of Branford, began to share lecturing duties with the master. The division of labor was necessary, for the school provided its students with a full curriculum, requiring a year and a half to complete. Moreover, both Reeve and Gould, at different points, sat as justices of the state's highest tribunal, then called the Supreme Court of Errors.

The Litchfield School of Law revolutioned legal education. First of all, Reeve and Gould institutionalized the subject. Elsewhere, aspirants to the bar labored in solitude or under the sporadic guidance of practicing attorneys. At Litchfield, there was a regular course of study. And it was a course of practical study.

Reeve and Gould dispensed with the classics upon which students had previously relied, the heavy folios of Justinian, Montesquieu, and Pufendorf. Indeed, nothing of Roman law was taught at Litchfield.

The school's emphasis was strikingly modern. Today's lawyer would find little surprising in a curriculum in which the topic receiving far the greatest amount of attention was "Systems of Pleading," followed, in order of importance, by "Insurance," "Bills of Exchange and Promissory Notes," "Real Property," and "Contracts."

To be sure, it would be misleading to suggest that you or I would have felt entirely at home in Litchfield. The two subjects to which Reeve and Gould devoted the most time, after the five just mentioned, were "Baron and Feme" and "Estates upon Condition." (Those of us who are not medievalists may be reassured to discover that "Baron and Feme" was simply the older equivalent of today's "Domestic Relations.")

In the early nineteenth century, American lawyers had few reported cases and fewer legal commentaries with which to work. Thus, Reeve and Gould could give their students an education available nowhere else. By 1813 the prospering school boasted an entering class of fifty-five, three-quarters of whom came from outside Connecticut.

But success, in the American fashion, begot competition. In 1817 an institution of higher learning in Cambridge, Massachusetts opened the doors of its own law school. Closer to home, Yale followed suit in 1824. At the same time, law reports and treatises became more common. The pedagogy of the Litchfield School became obsolete; the school closed in 1833. In fifty-eight years it had graduated over a thousand students, of whom two later became Vice Presidents of the United States (Burr and John C. Calhoun), while three later sat on the United States Supreme Court and scores were elected to Congress. A few of Litchfield's graduates went on to found the Yale Law School.[1]

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[1] This description of the Litchfield School of Law draws heavily on 2 Lewis (ed.), *Great American Lawyers* (1907), 455-487, a biographical essay on James Gould written by Simeon E. Baldwin. *See also* Fisher, *Litchfield Law School, 1774-1833: Biographical Catalogue of Students*, Yale Law Library Publications No. 11 (1946).

Having given America its first written constitution and first law school, Connecticut brought a history of precedence to its next legal breakthrough. Some of you may already know that, on September 25, 1789, President Washington named James Duane the first judge of the United States District Court in New York. This simple fact has suggested to some students of judicial history that Duane was the first federal judge nominated under the Constitution. And judges of the Southern District have thus claimed that the Southern District is the "Mother Court" of the Republic — a touching example of the delusions of centrality with which New Yorkers have charmed the country for so long.

In any case, the significance of the date of Duane's nomination is open to doubt. It is clear that each of the separate districts into which the primordial New York court later divided (as if by mitosis) is a descendant of the court on which Judge Duane sat. Whatever the merits of the claim asserted by *aficionados* of Judge Duane, they are shared by each of the offspring of New York's aboriginal court, including (I suppose) the Northern and Western Districts of New York; we may yet hear from this rostrum the claim that the "Mother Court" of the Republic now sits in Buffalo or Syracuse.

You will all be pleased to know that this confusion may be forestalled. For, on September 24, 1789, while James Duane was still a mere office-seeker, President Washington nominated his old friend, the aptly named Richard Law, judge of the United States District Court for the District of Connecticut — a court, I am glad to observe, that exists to this day under precisely the same name. Thus, by a span of some twenty-four hours, it could be said that the District of Connecticut is our "Mother Court," or as Judge Timbers suggests in moments of exaltation, our "Grandmother Court."

I am afraid I cannot report that Judge Law turned his head start to advantage. Indeed, the seven years he spent on the federal bench were uneventful ones. Still, the post must have been prestigious, for Law gave up his seat on the state Supreme Court to accept the federal appointment. Like many of his successors, Law found the transition easy from state public office to federal: of Connecticut's twenty-four district judges, four also served as state judges, thirteen served in the General Assembly or on its staff, and another seven did duty in the state's executive branch.

When Judge Law took his oath, the District of Connecticut, like most districts, was endowed with a single judge. The court sat alternately at New Haven and Hartford, both of which cities were at that time capitals of the state.[2] And, of course, Judge Law also sat, accompanied by a justice of the United States Supreme Court, as a United States Circuit Court.[3]

Had there existed an eighteenth-century version of *American Lawyer* or the *National Law Journal*, its correspondent in New Haven might have described the legal scene there by quoting Jedidiah Morse, author of the popular *American Universal Geography*. Though the Connecticut bar was crowded with some one hundred or so attorneys (a large number for that period), Morse noted that most of them found steady employment and support. The people of the state, he remarked, were of a peculiarly litigious spirit: he wrote that they were "fond of having their disputes, even those of the most trivial kind, settled *according to law*."[4] Putting it another way, a visitor from South Carolina said of the Nutmeggers of 1790, "they are determined rather to incur the expense of law (which is cheap enough) than to risk any violation of their just rights."[5] Only a couple of generations earlier there had been no professional lawyers on the scene and another observer had claimed that the absence of lawyers explained "the prevalent tranquility in politics and activity in religion."[6]

Lawyers in New Haven and Hartford ranked among the towns' more substantial citizens. Economically, lawyers flourished; it is reported that they increased their profits by handling more cases rather than by raising fees.[7] (These Connecticut Yankees had an intuitive notion of what New Yorkers now call "making it up in volume.")

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[2] New Haven ceased to be a co-capital in 1873, when the seat of government was established permanently at Hartford.

[3] The United States Circuit Courts, created by the Judiciary Act of 1789, were not abolished until 1911.

[4] 1 Jedidiah Morse, *The American Universal Geography* (1796), 453, *quoted* in Seymour, *A Lawyer of Kent: Barzillai Slosson and His Account Books, 1794-1812*, Yale Law Library Publications No. 2 (1935), 12-13.

[5] William Loughton Smith, "Journal, 1790-91," *Proceedings, Massachusetts Historical Society*, LI (October, 1917), 42, *quoted in* Lee, *The Structure of the New Haven County Legal Profession: 1780-1865* (unpublished thesis, Jonathan Edwards College, Yale University, 1976), 7.

[6] Osterweis, *Three Centuries of New Haven* (1953), 74.

[7] Lee, *supra*, 9.

They also took much of their pay in produce — such as wheat and tobacco — a practice upon which, it has occurred to me, we might draw in setting attorney's fees today.[8]

It was a young bar. Of the ten lawyers in New Haven in 1790, half were between twenty-five and thirty, only one as old as forty-five.[9]

Charm, looks, and stamina were among the tools of the trade, for court was an important source of entertainment. In sober New Haven, the city that has the great distinction of having given America "blue laws," leisure time was not to be squandered on mere diversions. When not working, New Haveners were expected to contemplate either the majesty of God or the wisdom of the law. As Congregationalism was the established state religion, the two objects of reverence overlapped not a little.

Almost any trial could draw a throng of spectators. Courts, unlike churches, did not maintain regular seating lists. Nonetheless, rank counted. Individual chairs not far from counsel were reserved for the gentry. Seated in the gallery were farmers and artisans. Furnace workers, teamsters, free blacks, and servants stood in the gallery.[10]

The lawyer who drew the greatest crowd was Pierpont Edwards.[11] He was the third son of Jonathan Edwards, the ferocious minister of the Great Awakening and author of the celebrated sermon, "Sinners in the Hands of an Angry God." The elder Edwards was regarded as an exemplary father, regularly disciplining his offspring to exterminate any sparks of pride.[12]

One suspects, though, that maintaining a proper humility must have been hard for Pierpont Edwards. He was, after all, well-connected: his father had been president of Princeton, his

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[8] Seymour, *supra*, 15.

[9] Lee, *supra*, 5.

[10] Seymour, *supra*, 21-22.

[11] Jeremiah Mason, *Memoir and Correspondence* (1837), 12, *quoted in* Lee, *supra*, 9.

[12] Hawksley (ed.), *Memoir of the Rev. Jonathan Edwards Compiled Originally by Sam Hopkins* (1815), 89, *quoted in* Douglas, *The Feminization of American Culture* (1978), 87.

nephews included Aaron Burr and President Timothy Dwight of Yale, and his son Henry became governor of the state.

In his own right, Pierpont Edwards was an accomplished lawyer, at once a stirring speaker and a repository of legal learning. A voracious worker, Edwards was said to earn $2000 a year, making him far and away the most successful attorney in the state.[13] When Richard Law died in 1806, Edwards was the natural choice to become Connecticut's second federal district judge.

Not long after he had donned his robes, he was confronted with a major case. Seven unrepentant Federalists were accused of having libelled President Jefferson and the Republican Congress by publishing the accusation that the President and Congress had conspired to make a present of $2,000,000 to, of all people, Napoleon Bonaparte.[14] Edwards's own sympathies must have been mixed. He was a leader of the state Republican Party and a confidant of Jefferson's. But among the defendants was our old friend Tapping Reeve of the Litchfield School of Law. If you have been following the genealogical convolutions of our story, you will recognize that Reeve and Edwards were related by marriage. Of course, times were different, and Edwards did not recuse himself. Nor was he deterred by the fact that the only statutory basis for a federal libel prosecution, the old Alien and Sedition Act so loathed by Republicans, had expired years earlier in 1801. After first ensuring that charges against Reeve were dropped, Edwards charged the grand jury that federal courts possessed sweeping common law criminal jurisdiction. The defendants appealed to the Supreme Court, which reversed Edwards in a famous opinion, *United States v. Hudson & Goodwin.*[15] The case, though, is instructive. We can see in it a clue to the expansion of federal jurisdiction. Though strongly connected to the local community, a federal judge could rule in favor of such jurisdiction, in part because of nationalist sentiment, in part because of parochial politics.

To be sure, the average federal case was not so significant. More common than large questions of federal jurisdiction were

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[13] Lee, *supra*, 8.

[14] United States v. Hudson & Goodwin, 7 Cranch (10 U.S.) 32 (1812); *see generally*, Wetmore, *Seditious Libel Prosecutions in 1806 in the Federal Court in Connecticut*, 3 CONN. B. J. 196 (1982).

[15] *See* Note 14, *supra*.

such simple issues as the imposition of the rigors of legal procedure on the informalities of everyday life in the young republic. In April of 1809 Edwards sat with Mr. Justice Brockholst Livingston, to whom Judge Weinfeld introduced us two years ago, as the United States Circuit Court for the District of Connecticut. Among the cases heard, one, *Howard v. Cobb*, [16] may strike you as presenting a few faintly familiar issues, albeit in a distinctly antique context.

One Jeduthan Cobb had signed as surety a promissory note to Stephen Howard, and Howard brought suit on the note. The plaintiff obtained a verdict, but the defendant moved in arrest of judgment. The court reporter tells us that, "the principal ground was, that the jury had separated, and mingled with the inhabitants of New-Haven, before they had agreed upon a verdict." Plaintiff's counsel is reported to have protested that it was the general practice in Connecticut "that juries . . . always separated, when they pleased." The defendant called one of the jurors to establish whether impermissible contact with spectators had occurred. The reporter's account of what followed is succinct:

> The Court informed the juror, that he should not be compelled to answer, as it was a misdemeanor in him; but that he might answer, if he pleased.
>
> The juror declined answering.
>
> The deputy-marshal, to whose care the jury had been committed, was then called.
>
> The court said, that he could not be compelled to answer, unless he pleased.
>
> He declined.
>
> The counsel for the defendant then proposed to wait until the rest of the jury should come in, observing that perhaps some of them would be willing to testify.
>
> The Court said they would not wait a moment in such a case as this.

The motion was denied, the plaintiff satisfied. But the defendant scored what I suppose one would call a "moral victory." For the court reporter also tells us that, "in the next case, the court appointed an officer to take care of the jury, and charged him

[16] 3 Day's (Conn.) Reports 309 (1809).

not to suffer them to separate, until they had agreed in a verdict." And so the good folk of New Haven were barred from their customary practice of, if you will, communal jury-tampering.

Court duties failed to exhaust Edwards's energy. In 1818, while still sitting as a federal judge, he assumed principal responsibility for the drafting of a new state constitution. Under his leadership, Connecticut adopted a system of government modeled on the national example, with a separate executive, legislature, and judiciary. And, despite (or, perhaps, *because* of) his clerical antecedents, Judge Edwards led the successful fight to disestablish the Congregational Church and make Connecticut a secular state.[17]

When Edwards died in 1826, he left behind a reputation for honesty and brilliance, as well as considerable wealth. The latter part of his legacy, at least, apparently went to his son-in-law, William Bristol, and along with that went the district judgeship. Judge Bristol served for a decade, dying in 1836.

It was now nearly half a century since the appointment of Richard Law. Connecticut had changed. To tell the truth, forward-looking Nutmeggers in the eighteenth century had hoped that one day New Haven might outstrip Boston (too far to the north) and New York (too far to the west) as a port for transatlantic shipping. In the 1820's, impressed by the Erie Canal, a number of Connecticut entrepreneurs tried to construct a comparable canal system to link inland New England with the Long Island Sound. Alas, New Haven's bay proved too shallow, the walls of the canal too porous.[18] Yet, throughout the state, manufacturing was beginning to develop, as the Industrial Revolution took hold.

There had been national changes too. The old struggle between Federalist and Republican had given way to a new line of political demarcation, one separating Democrat and Whig. New issues had come to the fore, abolitionism among them. Andrew Jackson was President, and the spirit of egalitarianism was abroad in the land. That spirit was reflected in the selection of Andrew T. Judson as Connecticut's fourth district judge.

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[17] Edwards had also been a founder of the Republican Party in the state and an advisor to Thomas Jefferson. *See* Osterweis, *supra*, 197-198.

[18] *Id.*, 247-248.

Unlike his predecessors, Judson was a Democrat, a Baptist, and a native of Ashford, in the northeastern part of the state, far from New Haven. Judson did not spring from an eminent family, and his origins are obscure. He did rise to the position of State's Attorney for Windham County. His tenure in that post was marked by a prolonged, bitter, and ultimately successful campaign to shut down a boarding school advertising education "for colored girls" that had been opened by the abolitionist Prudence Crandall.[19]

Whatever Judson's original prejudices, they were put to the test not long after he assumed the federal bench. On a tranquil day in August of 1839, the government brig *Washington* sailed into New London harbor escorting a bedraggled Spanish schooner, the *Amistad*. The arrival of the two ships marked the commencement of the most famous case in the history of the court.[20]

Earlier that year a Portuguese slaver working the west African coast had taken aboard a cargo of new captives, members of the aggressive Mendi tribe, to be sold in Cuba. After a transatlantic crossing, the Africans were sold at Havana to a pair of Spanish planters, Ruiz and Montez, apparently in violation of Spanish law, under which slavery had already been abolished. The planters loaded the slaves onto the *Amistad*, intending to transport them to their plantation further up the Cuban coast.

Once the *Amistad* cast off from Havana, the Mendi rebelled. Making use of a stock of machetes they found on board, they killed the captain and other members of the crew. The rebels then forced Ruiz and Montez to take the helm and ordered the hapless planters to steer — as the Africans put it — "toward the rising sun for the duration of two new moons," by which, of course, they meant to return to Africa. By day the planters complied, but at night they veered to the north. Following a zigzag

[19] Crandall v. State, 10 Conn. 339 (1834). Crandall prevailed on the appeal but nonetheless closed the school, apparently as a result of the expense and political furor stirred by the litigation.

[20] The account that follows is indebted to several sources, including the colorful narrative in 3 Lewis (ed.), *Great American Lawyers* (1907), 498-506, part of a biographical essay on Roger Sherman Baldwin written by Simeon E. Baldwin, and the thorough discussion in Osterweis, *supra*, 297-302.

course, the *Amistad* found its way into the Long Island Sound. There, the unwilling helmsmen sought the protection of the *Washington.*

No sooner had the *Amistad* docked than a legal storm broke. The federal government issued warrants for the Africans' arrest on charges of murder and piracy. The Spanish government sought custody of them to punish them under its laws. The crew of the *Washington* laid claim to the slaves as reward for salvage. And Ruiz and Montez claimed their human cargo as their lawful property. But in abolitionist Connecticut, the Africans were not without friends. It was widely reported that the rebels' leader, Cinquez, was a man of majestic bearing and noble demeanor. Professor Josiah Willard Gibbs, the elder, the illustrious Yale philologist, taught himself to converse in their native tongue with Cinquez, his ally Grabeau, and the other defendants.

Inspired by Cinquez's narrative, as recounted by Gibbs, local activists set up a fund to defend the accused. Contributions came from abolitionists throughout the country. Eminent attorneys were retained. From New York came Seth Staples and Theodore Sedgwick. From New Haven came Roger Sherman Baldwin, son-in-law of Roger Sherman, father of (Yale Law School Professor/Governor/Chief Justice) Simeon E. Baldwin, and himself on the threshold of as distinguished a legal career as that of any Connecticut lawyer. The federal government, however, adopted the position that the Africans were fugitives from Spanish justice and thus, under a 1795 treaty, had to be handed over to Spain. Counsel for the government was Charles A. Ingersoll, who would later succeed Judson as district judge.

The trial was an emotional one. Cinquez made a forceful impression on spectators and lawyers alike. In a technically brilliant decision, Judge Judson seized on a Spanish law of 1820 and held that the Africans were, under that law, free men. Thus, they could not be awarded to the crew of the *Washington* as salvage. Furthermore, their importation into the United States to be sold as slaves violated federal law. Under an 1819 statute, they had to be delivered to the President for return to Africa. Concluding his ruling, Judson — the very man who had closed down a school "for colored girls" — gave vent to his own feelings, declaring, "Cinquez and Grabeau shall not sigh for Africa in vain. Bloody as may be their hands, they shall yet embrace their kindred."

He was right. The government appealed his decision to the Circuit Court, which affirmed. A further appeal to the Supreme Court followed. Joining Baldwin as counsel on that appeal was former President John Quincy Adams. Now a member of the United States House of Representatives, the "old man eloquent" — as he was called — had long fought against slavery. He had become especially celebrated (or, in the South, notorious) for his ceaseless campaign against the "gag rule" under which Southern representatives had barred consideration of any petitions concerning slavery or related matters by the Congress. In the Supreme Court, the defendants again prevailed (in an opinion by Mr. Justice Story), and the former slaves were returned to their homeland. They left behind a literary and political heritage. Herman Melville drew on the *Amistad* incident to write his haunting novella of race and power, "Benito Cereno." And the name Cinquez passed into the annals of American history as a symbol of insurrection and liberation.

Upon Judson's death in 1835, Charles A. Ingersoll reclaimed the judgeship for the New Haven legal establishment. However, when Ingersoll died in 1860, the pendulum swung toward northern Connecticut again.

The district's sixth federal judge was William D. Shipman, a man whose name may ring a bell for those of you who recall Judge Nickerson's account of the Eastern District last year. As Judge Nickerson pointed out, Shipman spent a good portion of his tenure in regions somewhat to the south of Connecticut, which is how he came to be included in last year's lecture. I shall have to defer to the rule of *stare decisis* in accepting Judge Nickerson's observation that during his years in New York Shipman took *per diem* compensation that exceeded his regular salary. I should point out that Judge Shipman, the scion of an old Hartford family, bemoaned to his Connecticut friends the terrible fate that brought him to the bench at the height of the Civil War, thus compelling him to spend so much time away from his beloved home state. On the other hand, when Judge Shipman retired in 1873, he promptly joined a leading Wall Street firm. Apparently the judge was able to master his pangs of nostalgia for the Constitution State.

Shipman was not an imposing figure, being a plain-looking man, heavy-set, and of average height. But he had considerable independence of character. *United States v. Baker*[21] arose while Shipman was sitting by designation on the Circuit Court in New York. In the summer of 1861, after the fall of Fort Sumter to the secessionist states, a Confederate privateer, the *Savannah*, was captured by the United States Navy. To the surprise of Confederate leaders, and to the disgust of many foreign observers, the captives were charged as pirates, since the Confederacy was not recognized as a foreign government.

On the day the trial was scheduled to go forward, Shipman's colleague on the Circuit Court, Mr. Justice Samuel Nelson, suffered an accident when his horse broke from his control. The prosecution, vociferously supported by the gallery, urged that the trial open at once.

The reason was simple. Under the procedures of the day, there could be an appeal to the Supreme Court only if the Circuit Court divided on an issue. With only one judge sitting, there could be no division, hence no appeal. The government, scenting a conviction, had seized on the circumstance of Justice Nelson's absence to try to preclude an appeal. Shipman, however, would not be swayed. Ruling on one of the more momentous motions for extension of time in legal history, he ordered a continuance and preserved the defendants' chances for appeal. That fall, the case was tried before the two judges and resulted in a hung jury.

When he left the bench in 1873, William Shipman was succeeded — in the Connecticut style — by a cousin, Nathaniel Shipman. The second Judge Shipman had been a dean of the state Republican Party and an eminent private attorney. During his nineteen years as a district judge, Nathaniel Shipman was a regular lecturer at Yale Law School. In 1892, he became the first Connecticut district judge elevated to the modern Court of Appeals for the Second Circuit.

Judge Shipman's connections to Yale and to the Court of Appeals were replicated in his successor, William Kneeland Townsend. When the Yale Law School held its first public commencement in 1874, both the Civil Law Prize and the Senior

[21] Fed. Case No. 14,501 (C.C.S.D.N.Y. 1861).

Prize were won by young Townsend. For the Civil Law Prize, Townsend submitted an essay comparing roman advocate and English barrister and won $30. The Senior Prize, worth a princely $50, was awarded Townsend for what was described as the best essay in the United States on the cy pres doctrine. Of the quality of the other American essays on this subject, there is no record.[22]

At any rate, Townsend quickly went on to other accomplishments. After a brief turn in the law office of Simeon E. Baldwin, Townsend returned to Yale to become one of the first recipients of the newly established degree of Master of Laws in 1878. A year later, the law school established another new degree, Doctor of Civil Law, and Townsend promptly earned that as well.At that point the faculty apparently could think of no more new degrees, so they simply hired Townsend as a professor.

He was an immediate success. An enthralling lecturer, Townsend was at ease with the practical as well as the academic side of the law. And despite the Yankee ancestry reflected in his lean frame and sharp features, Townsend had a disarming sense of humor. Having put his students through the rigors of the study of admiralty law, he could summarize the field with sentiments I suspect many of us may secretly share: "There is a branch of the law where there are no attorneys, no complaints, and no rules of evidence, but where all that a prudent ship owner has to do in order to make a profitable venture is to insure his ship heavily, and then negligently collide with and sink another vessel."[23]

Townsend's practical experience let him assess the hazards of litigation. Quoting a colleague, he told his students:

> If you win, you are the hero of the hour. If you lose, tell them Jeremiah Black's old story about the glorious uncertainty of the law. You will remember that Mr. Black said he once had two cases brought to him by the same man at the same time. One was a suit, by his wife, for a divorce on the ground of impotence; the other, a prosecution by his servant girl for seduction and bastardy. "And if you'll believe me," said Mr. Black, "I lost them both."[24]

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[22] Hicks, *Yale Law School: 1869-1894*, Yale Law Library Publications No. 4 (1937), 17.

[23] "Hotchpotch," *The Yale Shingle* (1893), 16. The occasion for Judge Townsend's sarcasm was *The Great Western*, 118 U.S. 520 (1886). *Cf. id.* at 529 (Matthews, J., dissenting).

[24] "Hotchpotch," *The Yale Shingle* (1893), 15-16.

Scholar that he was, Townsend sought to reduce the uncertainties. In 1881 he completed a rewritten edition of the Connecticut practice manual that, with revisions, remained in use for more than half a century.

In 1892 Townsend was appointed district judge. He continued teaching, and his two careers cross-fertilized one another. In 1901 the Law School celebrated Yale's bicentennial with a collection entitled *Two Centuries' Growth of American Law*. As befit a district judge, Townsend contributed chapters on patents, copyrights, trademarks, and admiralty. Summarizing a decade's experience on the federal bench, his essays are keen synopses of case law and legal theory enlivened with literary gleanings and shrewd comments on practical matters. The essays also have a valedictory quality, for the next year saw Townsend's elevation to the Court of Appeals and departure from active teaching.

The character of Townsend's intellect is etched in his writing. In the thirty pages of his essay on patents, for example, he details some sixty cases.[25] He introduces Alexander Graham Bell and New Haven's Eli Whitney, as well as the inventor of patented fixtures for "delivering" toilet paper and the wizard who applied principles of umbrella construction to the fabrication of ladies' dresses. Not surprisingly, Townsend then warns against the "evil result[ing] from the practice of granting minor patents for trifling improvements of questionable utility."[26] After touching on Eskimo architecture and Fiji weaving techniques, Townsend comments that the history of American patent law gives proof of "the inventive genius of the Yankee."[27] Yet the underlying issues of patent law can also be found in John Milton, Townsend points out, for "[t]he inherent essence of patentable novelty is akin to the Argument of Design [in *Paradise Lost*]."[28] "In any event," he continues, "the works of metaphysicians and theologians on [the] evidences [of the Argument of Design] in the natural world are helpful in determining the question of patentability."[29]

Before we leave Judge Townsend, I shall indulge in one further quotation, again on the subject of patents. Here we find

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[25] *Two Centuries' Growth of American Law (1701-1901)* (1901), 391-421.
[26] *Id.*, 415.
[27] *Id.*, 419.
[28] *Id.*, 397.
[29] *Id.*, 397-398.

the judge demonstrating both his patriotism and his feminism:

> Voltaire tells us that "Very learned women are to be found in the same manner as female warriors, but they are seldom or never inventors." From his point of view, with the French woman as his object, perhaps he was right. But the history of invention in this country does not support this statement. From the first patent, to Mary Kies in 1809, for straw-weaving, nearly six thousand patents have been granted to women, covering every department of the arts from baby jumpers to burial apparatus and cigarette-holders. One woman has outshone Desdemona by inventing a device for lowering keys from windows; another has patented a rake.[30]

When Townsend died in 1907, he left behind an outstanding body of learned opinions and lively contributions to legal scholarship. In his memory the William K. Townsend Professorship was established at Yale Law School, and it is entirely fitting that the most recent occupant of that position has been a man who has followed Townsend's path, The Honorable Ralph Karl Winter, Jr.

Judge Townsend's ties to Yale Law School were closer than those of most Connecticut federal judges. But, as I noted earlier, Yale has had an extraordinary impact on the district court. Indeed, of the court's twenty-four judges, twenty-one have been either teacher or student (or both) at Yale. (It should be noted also that in recent years the state's second law school, at the University of Connecticut, has achieved national prominence; a third institution, the University of Bridgeport Law School, graduated its first class of lawyers in 1980.)

Typically, James Platt, the man who succeeded Townsend as district judge, received both his undergraduate and legal educations at Yale. To Judge Platt fell the burden of trying *Loewe v. Lawlor*, popularly known as the "Danbury Hatters' Case."[31] In 1902 the fledgling American Federation of Labor launched a strike against the D. E. Loewe Co., a hat manufacturer. Loewe hired strikebreakers, and the AFL responded with a boycott. Loewe sued under the Sherman Act. Judge Platt granted the union's demurrer. The Supreme Court, however, reversed Platt, applying the Sherman Act to the union's activities — a result revoked a generation later by the National Labor Relations Act.

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[30] *Id.*, 419-420.

[31] 148 F. 924 (C.C.D.Conn. 1906), *rev'd*, 208 U.S. 274 (1908).

The case demonstrates how the district court's docket was changing. The presence of manufacturers throughout the state made Connecticut a frequent site for labor unrest during the first years of the twentieth century.

Edwin Thomas, who succeeded Platt, was the last Connecticut district judge whose reputation was made through his expertise in patent law. While such cases occupied a smaller portion of the docket, their complexity had increased. In one hard-fought litigation, involving the Remington and National Cash Register companies,[32] Thomas finally loaded a half ton of exhibits into his car and sequestered himself in a rustic cabin for two months before rendering his decision. Thomas, incidentally, stayed on the bench for twenty-six years, the longest tenure of any district judge in Connecticut. It was during his tenure that Connecticut, in 1928, was assigned a second district judge.

One reason for the expansion of litigation was, of course, the adoption of the Federal Rules of Civil Procedure in 1938. The Rules helped ease access to federal courts. The guiding spirit of the new Rules was, as we all know, Charles E. Clark, then Dean of the Yale Law School, later an honored Connecticut representative on the Court of Appeals. In researching legal administration during his teaching days, Clark had been assisted by a law student named J. Joseph Smith. One of Smith's contemporaries at the Law School was a young man by the name of Robert Anderson.

Robert Anderson went on to serve his country with distinction during the Second World War; thereafter, he embarked on a legal career filled with public service. By turns, he was appointed first to the Connecticut Superior Court, to the United States District Court for the District of Connecticut, and ultimately to the United States Court of Appeals for the Second Circuit. J. Joseph Smith, in the meantime, went on to serve in the House of Representatives. In 1941 President Franklin D. Roosevelt appointed him a district judge. In discussing Judges Anderson and Smith, whom all of you remember, we are of course coming upon the district court in modern times.

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[32] Remington Cash Register Co. v. National Cash Register Co., 6 F.2d 585 (D.Conn. 1925).

In particular, Judge Smith's appointment to the court completed a phase of the court's maturation, for he was the first Irish-American and the first Roman Catholic to sit on the federal bench in Connecticut. (In appointing in 1961 M. Joseph Blumenfeld — a warm friend of Judge Smith — President John F. Kennedy appointed a Jew for the first time; and when Robert C. Zampano was named to the bench in 1964 he became the first American of Italian descent to sit on the court.)

The cases upon which Judge Smith sat also reflected the changing times. They ranged from the World War II spy trial of the socially-prominent Philadelphia pastor, the Reverend Kurt Molzahn,[33] to *Thompson v. Shapiro*.[34] The latter case was decided in 1967, and Judge Smith, who had been elevated to the Court of Appeals in 1960, sat on the case as a member of a three-judge district court. His opinion for the court struck down the Connecticut law under which Aid to Dependent Children was withheld for one year for newly arrived residents, unless they had come with substantial employment prospects or a certain amount of money. Judge Smith's holding that the law abridged the constitutional right to interstate travel was ultimately affirmed by the Supreme Court.[35]

Judge Smith also upheld the court's traditional commitment to continuing legal education. The story is told that the judge was once advised by a lawyer arguing before him that the judge simply had to grant the lawyer's motion. The lawyer explained at great length that in a factually identical case, the judge had granted just such a motion only two weeks earlier. So, the lawyer concluded, the judge certainly would have to rule in his favor now. Judge Smith looked down at the attorney. "You are assuming," said the judge, "that the court has not learned anything in the past two weeks."

In that spirit, let me continue the tradition of my court a moment longer and raise the question of what we have learned during the past half-hour. I don't think I can say there is a moral to the story. But I would like to share with you some thoughts I had while enduring the pleasant labor of compiling this brief history.

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[33] *See* United States v. Molzahn, 135 F.2d 92 (2d Cir. 1943).
[34] 270 F. Supp. 331 (D.Conn. 1967).
[35] Shapiro v. Thompson, 394 U.S. 618 (1969).

At the very beginning of our tale, I ought perhaps to have mentioned one of Connecticut's great native sons, Oliver Ellsworth. It was Ellsworth, later Chief Justice of the United States, who drafted the Judiciary Act of 1789. And it was that act that created a national judiciary. But the act did not just create that judiciary; it set it in delicate equipoise between the forces of local influence and federal uniformity. Thus, district courts are given jurisdictions respectful of the geographical boundaries of the states. The circuit courts have always grouped sets of states within their jurisdiction. On the other hand, it was a recognition of the dangers of local prejudice that led to the conferral upon district courts of diversity jurisdiction. And it was a balancing deference to state traditions that led to the instruction that district judges were to look to "the laws of the several States"[36] for rules of decision. We see this paradox embodied in the very figure of the district judge, summoned from a career that has brought success within a particular town or county, then asked to decide disputes according to relatively abstract principles grounded in the ineffable national welfare.

That, of course, is the ideal of "federalism," and that is why we are "federal," not "national," judges. But I mention this basic concept for a particular reason. As I worked to give some sort of shape to these remarks, I found myself running up against a persistent problem. I am sure I have not hidden it from you. When I considered the early years of the Connecticut district court, it was easy to distinguish it from the New York courts discussed by Judge Weinfeld and Judge Nickerson. As I came to the later years, however, I found it harder to specify what was unique about the District of Connecticut. I do not mean to suggest that local differences evaporated entirely — it is certainly the case that those of us who sit in Bridgeport, New Haven and Hartford see fewer of the great securities trials of the Southern District or the large-scale drug prosecutions of the Eastern District. My point is simply that local eccentricities paled beside the many areas of convergence.

But that, I finally realized, is just as it should be. The growth of our federal court system is measured by the development of a uniform federal law. That development necessarily means a blur-

[36] 28 U.S.C. §1652.

ring of the identity of any individual district court, just as a lawyer who is appointed to the federal bench perforce gives up something of his or her standing as a local political, community, or ethnic figure. What a historian of a district court comes to appreciate, then, is that any such provincial effort eventually gives way to a larger history, the chronicle of our two-hundred-year-old experiment in the building of a continental republic, or what Chief Justice John Marshall called the American empire.[37] In sum, the history of our court, or any other Federal court, is simply part of our continuing effort to make one out of the many.

[37] Cohens v. Virginia, 6 Wheat (19 U.S.) 264, 414 (1821).