

**Celebration
of
175th Anniversary**

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**NEW YORK, NEW YORK
November 5, 1964—2:00 P.M.**

Present

HON. J. EDWARD LUMBARD
Chief Judge, Court of Appeals, Second Circuit

HON. SYLVESTER J. RYAN
Chief Judge, United States District Court
Southern District of New York

HON. RICHARD H. LEVET
District Judge

HON. VINCENT L. LEIBELL
HON. EDWARD J. DIMOCK
Senior District Judges

HON. JOHN F. X. MCGOHEY	HON. LLOYD F. MACMAHON
HON. SIDNEY SUGARMAN	HON. THOMAS F. CROAKE
HON. EDWARD WEINFELD	HON. DUDLEY B. BONSAI
HON. THOMAS F. MURPHY	HON. WILFRED FEINBERG
HON. DAVID N. EDELSTEIN	HON. IRVING BEN COOPER
HON. EDMUND L. PALMIERI	HON. EDWARD C. MCLEAN
HON. JOHN M. CASHIN	HON. INZER B. WYATT
HON. FREDERICK P. BRYAN	HON. JOHN M. CANNELLA
HON. CHARLES M. METZNER	HON. CHARLES H. TENNEY
	District Judges

Memorandum on this Seventeenth Day of October in the year of our Lord One Thousand Seven Hundred and Eighty Nine personally appeared before me Richard Morris Esq. Chief Justice of the State of New York the within named James Duane Esq. and took the oath of office prescribed by an Act of the Congress of the United States Entitled an Act to Establish the Judicial Courts of the United States passed the twenty fourth day of September 1789.

James Duane Esq.
Richard Morris Esq.

Courtesy of The New-York Historical Society, New York City

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JUDGE RYAN: Chief Judge Lumbard, members of the Court of Appeals, my brother judges of this Court, members of the bar, ladies and gentlemen. This special session of the court has been convened that we may take official notice of the 175th Anniversary of the founding of the United States District Court for the Southern District of New York. We are grateful to Associate Justice Harlan, to Chief Judge Lumbard and the members of the Court of Appeals for the Second Circuit and to the members of the bar for their participation in these ceremonies. It is altogether fitting and proper that we do not let this memorable day pass unnoticed.

The Court is indebted to the members of the Special Committee consisting of Judges Levet, Dimock and Bonsal who arranged this program and the exhibit of historical documents in the entrance hall of the courthouse, and it seems most appropriate that I present at this time Judge Levet who has served as Chairman of the Special Committee and who will speak of the early days of the Court.

Judge Levet.

JUDGE LEVET: Chief Judge Ryan, Chief Judge Lumbard, members of the Court of Appeals, fellow members of this Court, Mr. Seymour, and members of the bar, ladies and gentlemen:

The time was 1789. The place was New York City, then the capital of the United States. In early April of that year the Congress of the United States met, counted the electoral votes and declared Washington unanimously elected.

On April 30, 1789, Washington took the inaugural oath at Federal Hall. On September 24th of that same year the first judiciary act was passed and two days later President Washington appointed, and the Senate confirmed, Honorable James Duane as the first judge of the District of New York.

James Duane, son of a New York merchant of Irish birth and a mother of Dutch descent was born in New York City on February 6, 1733. Without college or university training he studied law in the office of a great lawyer, one James Alexander, and was admitted to the bar in 1754. On October 21, 1759, Duane married Mary Livingston, eldest daughter of Colonel Robert Livingston, the proprietor of Livingston Manor. Duane's practice grew in a wide variety of cases in all courts of the province. He was an accomplished admiralty lawyer.

Duane also became a substantial landholder both as a developer and as a speculator. By the end of the Revolution he owned more than 30,000 acres in Duanesburgh, west of Schenectady. He also purchased some 67,000 acres under New York grants which

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were contested by Vermonters holding New Hampshire titles. I might add that his investments in Duanesburgh fared much better than his speculation in Vermont.

The New York Legislature on October 21, 1779, appointed Duane one of the commissioners to collect evidence to maintain the boundaries of New York. He prepared an elaborate brief against the claims of New Hampshire and Massachusetts which became a primary source of New York's defense in the post-war New York-Massachusetts western lands cases and in the settlement of this controversy by negotiation through a joint Massachusetts-New York commission on December 16, 1786 at Hartford, Connecticut.

Duane was a member of the New York State Provincial Congress and of the Second Continental Congress. When, after the British evacuation, he returned to New York City on November 25, 1783, he found his houses on King—now Pine—Street and at the corner of Water Street and Fly Market almost completely destroyed. His country place of 20 acres, now constituting Gramercy Park, was in fair order, this house having been occupied by one of the British generals.

On February 4, 1784, the New York Council of Appointment designated him Mayor of New York. He served in that office until September 1789, while also serving as a member of the New York State Senate.

In 1788, Duane as a delegate to the Poughkeepsie Convention called to act on the proposed Federal Constitution, served as chairman of the Committee on Rules. He ardently urged adoption, saying by way of concluding argument: "This Constitution is the highest effort of human wisdom."

On July 26th, 1788 it was adopted by a vote of 30 to 27. In July, 1789, the New York State Legislature selected Philip Schuyler as one United States Senator while Rufus King, then a member of the New York State Legislature, but formerly of Massachusetts, defeated Duane by a single vote as Schuyler's associate.

Duane's judicial experience began in 1784 when, as Mayor, he became ex officio chief judge of the Mayor's Court. Duane improved the practice of this court, later called the Court of Common Pleas. He adopted new rules, he broke up a monopoly in that court which, as a lawyer's paradise, had limited the practitioners in the court to eight lawyers. As a result the court's business quadrupled that of the Supreme Court.

Duane was one of the first American judges to file a written opinion, that in *Elizabeth Rutgers v. Joshua Waddington* in

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1784, a test case which involved the New York Trespass Act. Arguments of counsel and the opinion of James Duane appeared in a recent publication entitled "The Law Practice of Alexander Hamilton," edited by Julius Goebel, Jr. and others and published under the auspices of the Cromwell Foundation by the Columbia University Press.

As Professor Goebel points out in his work, the Rutgers case was a "marker on the long road that led to the ultimate formulation of the American doctrine of judicial review. The final question, unstated at this time," Professor Goebel writes, "was whether the law of nations or the treaty, if effective, was enough to overthrow the provision of the act eliminating justification by military orders."

The court, through Duane's opinion, held that the plaintiff was entitled to collect damages from Waddington for the time he held the widow Rutgers' brewery under the British Commissary General but not for the period for which the British commander acting under the law of nations governing belligerents had issued an order for the use of the plaintiff's premises.

Professor Goebel further comments, "Duane's opinion appears almost studiously ambiguous. Complex and scholarly it weaves through a maze of arguments arriving at a compromise pleasing neither plaintiff nor defendant, Patriot nor Loyalist, and hints at things more far-reaching than those actually stated." Some latter day cynics may contend that this characteristic of the opinion demonstrates Duane's fitness for appointment to the federal bench. I must disagree.

However, other events following this decision must have tempered Duane. The New York Assembly solemnly "Resolved that the adjudication aforesaid is in its tendency subversive of all law and good order, and leads directly to anarchy and confusion." The Legislature considered but defeated a resolution calling upon the State Council of Appointment to designate a new mayor and recorder of the City of New York "as will govern themselves by the known laws of the land."

Duane had the good fortune—I do not say foresight—to send a copy of his opinion to Washington, the future President, who indicated his approval.

Thus James Duane, by legal ability, by juristic capacity, and, shall I add, by legislative exposure was prepared for appointment to the Federal District Court.

On September 30 of that year, after he had accepted the appointment, he wrote to his wife apologizing for having, as he said, "to decide on a question of great moment which greatly con-

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cerned my family without an opportunity of consulting with you or any of the children."

President Washington, it seems, had sent Hamilton to urge Duane to accept the appointment but he gave him only one day to consider. Duane wrote further in this letter to his wife of his choice between the office of Mayor and that of a Federal Judge. "Both offices I consider as highly honorable. They are equally profitable"—that meant \$1500 annually—"The judge's place is held under the commission of the President of the United States during good behavior: the Mayor's annually renewed at the whim of a council of appointment. The judge's office permits him to reside in any part of the State," and here please note "and affords a sufficient portion of leisure for his private affairs and recreation and study. The mayor's demands the most slavish confinement and a waste of time on insignificant matters, as well as care and assiduity on those which are important. In short if he is upright, and, as he ought to be easy of access, he cannot call an hour of his time his own."

Then he continued to his wife: "While I am writing this letter, I received an invitation to dine with the President tomorrow. I presume I shall then receive my commission. My district court will be opened on the first Tuesday in November, and held every three months. Beside which I am associated with the judges of the Supreme Court in the circuit of this State, to be held the beginning of April and October yearly at New York and Albany alternately."

The commission of James Duane, dated September 26, 1789, is now deposited with other Duane papers in The New York Historical Society. It contains virtually the same language used currently, reading in part: "Know Ye, that reposing special Trust and Confidence in the Wisdom, Uprightness and Learning of James Duane of New York," and so forth.

On the back of the commission Richard Morris, Chief Justice of the State of New York, certified that Duane had taken the oath of office by him on October 14, 1789. This commission, I may add, is one of the exhibits which will be available to be seen by you today.

The first session of the United States District Court for the then District of New York was held in the building then known as "The Exchange," which was located in the middle of Broad Street at the intersection of Water Street.

The minutes of the first session of this Court, held on November 3, 1789, now are in the National Archives in Washington. The agenda included the reading of Judge Duane's commission, the appointment of the Clerk of the court, Robert Troup, the

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Marshal William F. Smith, the United States Attorney for the District of New York, Richard Harrison, and the Crier, Silas Harrington.

The Court accepted the application of Richard Harrison and ordered that he be "admitted to practice in this Court in the Several Characters of Attorney, Solicitor, Counsellor, Proctor and Advocate."

In like fashion, Richard Varick, successor to Duane as Mayor of New York, John Laurence, later a Judge of this Court, Brockholst Livingston, later a Supreme Court Justice, and other lawyers were similarly admitted "in Several Characters."

A "Roll of Attorneys" on skins of parchment was instituted and continued for about 45 years, until books were substituted.

Finally, and appropriately, the Court ordered that Mr. Harrison and others should prepare a system of rules to regulate the practice of the court and that they make the report thereof in that old phrase, "with all convenient speed."

This court was the first organized under the sovereignty of the United States and its existence has been continuous since that date.

In February 1790 Judge Duane charged the first grand jury of this court. He said, "Gentlemen of the Grand Jury, in a charge to the first Grand Inquest convened for this District, I tread an unbeaten path. We are now become emphatically a nation. A new Constitution pervades the United States."

When they met again two days later the grand jury in turn presented an address to Judge Duane expressing thanks for his charge, "in which the nature of our duty, and the judicial system of the United States are described in the clearest manner, and recommended by the most cogent reasons."

The grand jury "had nothing to offer to the Court nor any business before them" and at their request they were discharged. Federal crime had not yet commenced.

On April 16, 1790, the minutes record the filing of a libel entitled "The United States vs. Three Boxes of Ironmongery Lines and Brushes, Four Boxes of Glassware, et cetera," and on May 5, 1790, libels of "The United States vs. Two Looking Glasses, Three Boxes of Oil, Forty-one Cheeses, et cetera."

The Circuit Court seems to have handled all criminal cases arising under federal laws or jurisdiction during Duane's tenure as a District Court judge. During the first five sessions of the Circuit Court, Chief Justice Jay, Justice William Cushing and Judge Duane composed that court. Duane's work involved chiefly admiralty and maritime matters.

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Thomas Rodney, and I speak now briefly of the character of Duane, a Delaware member of the Confederation Congress, and later Associate Justice of the Supreme Court of Delaware, spoke of Duane as a "man of good and even temper, attentive to business, of a low soft voice, not eloquent, nor divining, but upon the whole a good republican," spelled with a small r, "desirous of promoting the general weal." As Dixon Ryan Fox, the historian, declared, Duane "had the moderate's opprobrium from the extremists, but he was trusted as an honest counselor by those minds not addled by party passion."

Edward P. Alexander, Duane's biographer, notes that during his official tenure Duane led a pleasant life as he shuttled back and forth between New York and Duanesburgh, with many stops at Livingston Manor. He frequently supped with Washington and other high officials.

Duane was prominent in rebuilding New York religious and educational institutions after the war. He served for years as the Senior Warden of Trinity Church. He was also Chairman of the Board of Trustees of Columbia College.

In May 1789 Duane proudly attended the Columbia commencement at St. Paul's Chapel to hear his son, James Chatham Duane, deliver the salutatory in Latin on the study of philosophy and mathematics. President Washington and Vice-President Adams were in the audience. Late in 1793 the Judge proudly admitted his son to practice in this court as attorney, solicitor and proctor.

At the Poughkeepsie Convention in 1788 James Duane, in a moment of personal revelation, declared, "I hope God has given me a conciliatory talent." Men with conciliatory talents are not as a rule heroes. As Professor Fox noted: "All they do is to get things done that stay done, prevent the wreckage of good plans, stabilize institutions and adjust them to their times. Such leaders," he said, "are likely to be men of great importance rather than of great fame." Such a man was James Duane, called by his biographer a "Revolutionary Conservative."

James Duane retired in 1794. In 1795 he made his home in Schenectady. He died on February 1, 1797 and was buried beneath the Episcopal Church at Duanesburgh, New York.

Judge Duane was followed by John Laurence, 1794 to 1796, and Robert Troup, 1796 to 1798, both successful lawyers. Then the next judge was John Sloss Hobart, 1798 to 1805. Hobart was not a lawyer but he had served for twenty years in the Supreme Court of the State of New York.

Then came Mathias Burnet Tallmadge, 1805 to 1814, who became the first judge of the Northern District when the district

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was divided in two in 1814, and William P. Van Ness, 1812 to 1826, who became the first judge of the Southern District.

Samuel Rossiter Betts, succeeding Van Ness and appointed by President John Quincy Adams in 1826, served for over forty years until 1867.

Erastus C. Benedict in 1868 said of Judge Betts, "More than any other man he formed the admiralty system of the United States."

Time does not permit more detail. In a measure the history of its judges is the history of the court, and today we pay our tribute to the memory of the early members of this court.

I thank you very much.

JUDGE RYAN: To appreciate the distinctive position that this court occupies today in the American Judicial system, some brief comments should be made of the years which have passed since its origin. As our society has evolved since the time of the founding fathers, so too has the jurisdiction of this court expanded. This has led to great changes in the nature and importance of suits filed in this court and to a tremendous increase in the volume of judicial work and in the number of judges in the district.

The jurisdiction of the court today stands in marked contrast to that originally exercised by it. When the Congress enacted the Judiciary Act of 1789 it elected to exercise its constitutional power to establish "inferior courts" and provided for two federal trial courts, the circuit courts and the district courts. The district courts were given jurisdiction to try and determine both minor criminal and civil matters. The circuit courts conducted many of the suits which today are heard and determined by the district court.

It was generally assumed at the time that this court's most important function would be the exercise of admiralty and maritime jurisdiction, which it inherited from the Colonial vice-admiralty courts and the Admiralty Court of the State of New York.

At first this court's admiralty process was invoked primarily to perfect title on the sale of vessels. During its first five years almost three-quarters of this court's time was taken up with government litigation. The ensuing decade, however, saw admiralty steadily, though slowly, increase in volume and importance. It was in this field that this court was first to acquire prominence. The first admiralty case to be reviewed by the Supreme Court arose in this district. With the ascendancy of Judge Betts in 1826, followed by Judge Blatchford in 1867, by Judge Addison Brown in 1881, the age of admiralty came to this court,

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which, since 1814, has been formally known as the Southern District of New York.

For nearly a century this court was to remain primarily a court of admiralty and maritime jurisdiction, with only the sporadic addition of bankruptcy increasing its docket to any appreciable degree. It was not until Judge Blatchford was appointed that the court's equity docket was to increase substantially in size and importance. While the Judiciary Act of 1789 had conferred very limited criminal jurisdiction in the district court, the bulk of the criminal work in this district was conducted by either the circuit court or by Judge Benedict of the Eastern District, who held criminal term for nearly thirty years in both the Southern and Eastern districts of New York.

The business of any court is generally determined by the nature and by the extent of the predominant activities of contemporary life, but with this court's jurisdiction remaining unchanged, the court could not keep pace with the legal developments attending our growth. It was therefore before the United States Circuit Court, sitting in the Southern District of New York, that the more important civil and criminal cases of the day came on to be heard. A marked change took place in 1891, when the trial work of the circuit court was transferred to the district court, making it the principal federal court of original jurisdiction in this district, and with the passage of the Judicial Code of 1911 the district court ceased to be a tribunal for the resolution of minor disputes and became the primary court for vindication of almost every right given by the Constitution, the laws and treaties of the United States.

The jurisdiction of the court at its sesquicentennial commemoration in 1939 was described by Judge Thomas D. Thacher as "wider than any other court." He then said, "I venture to say that no other district court in this country, or any other court in any other land exercises a jurisdiction comparable in scope and importance with the jurisdiction exercised by this court." That description remains true today. On the civil side the jurisdiction of this court embraces not only general federal questions of diversity jurisdiction, but an ever-increasing area of things uniquely federal, such as antitrust, civil rights, copyrights, labor law, patents, securities, trademarks and many other fields of law. On the criminal side this court sits as the *nisi prius* court for the prosecution of cases by the United States.

Today the United States District Court for the Southern District of New York is not only the oldest federal court but is one of the busiest courts of our federal judiciary system. This growth has been continuous. During the first five years of its

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existence it entered only three hundred odd final orders. In 1860, 543 suits were filed in both the district court and the circuit court for the Southern District of New York. Within the decade, the case load almost doubled in number. In 1900 a new area, bankruptcy, surpassed the total number of other cases filed, and by 1910 the court reached a new high of 1780 cases, in addition to 1346 bankruptcy matters.

In 1920, 7620 cases were begun in this court, excluding bankruptcy. By June 30, 1950, 11,134 civil cases were pending, more than one-fifth of the entire district case load throughout the country. By 1960 there were again over 11,000 civil cases pending. During the year ending June 30, 1964, this court disposed of almost a thousand criminal prosecutions and of almost 5600 civil cases, together with a tremendous number of bankruptcy and important corporate reorganization matters.

The increase in judicial business demanded a concomitant increase in the court's personnel. It was not until 1903 that Congress created the first additional judgeship for this district. While during the first 150 years of its existence thirty-two men occupied the position of judge in this district, the intervening 25 years saw an equal number appointed, giving us today an authorized quota of 24 active judges and at present two active senior district judges, Judges Dimock and Leibell.

This court has been fortunate in its judges of the past. It is equally indebted to the services of a distinguished bar. Both bench and bar are equally appreciative of the aid of the clerks and marshals of this court. The public has been well served by the faithful efforts of the United States Attorneys of this district from 1789 onward, many of whom are members of the court today, and by the present United States Attorney, Robert M. Morgenthau.

And so today the heritage of a great past is the foundation of our present stature; the support which bench and bar give to the administration of justice provides the hope and the inspiration of improvement for the future. The bench and bar exist not only to serve the public but that is our aim, our purpose and our desire. As President Washington commented when he wrote in 1789, "The true administration of justice is the firmest pillar of good government."

It is with sincere regret, personal regret, shared by me and by my colleagues, and I know by many of you present, that I note today the absence from this bench of our distinguished and loved former Chief Judge John Clark Knox, who was an active member of this court for forty-six years. He has written a letter and I would like to read it—it will only take a moment—a great man,

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his contribution to this court, to its traditions, aided in no small measure to establish its present status, I read as follows:

"Receipt is acknowledged of the invitation of the Historical Committee to attend the celebration of the 175th Anniversary of the establishment of the U. S. District Court, for the Southern District of New York.

"It would give me great pleasure and satisfaction to be present on that occasion. However, my physical condition will prevent my attendance.

"Please permit me to extend my personal regards to each member of the Court, and to express the hope that the celebration will be a complete success.

"It is a deep satisfaction that I was permitted to sit as one of the Judges of the Court for a period of 46 years."

Each and every one of the judges of this court is conscious of our indebtedness to Judge Knox and to those who have gone before us and who have served on this court and who have built and handed to us its traditions. It is our heritage that we will strive to maintain and preserve.

I now present Chief Judge Lumbard.

JUDGE LUMBARD: Chief Judge Ryan and Judges of the District Court, on behalf of the circuit judges who comprise the Court of Appeals and the Circuit Council for the Second Circuit, I congratulate the district court on this further evidence of its maturity as the senior court, as well as the mother court, of our federal system as you pass the 175-year mark.

What is significant about your aging is not the mere passage of these years which have seen seven generations of lawyers and judges come and go in your courtrooms; it is the building of a great tradition of judicial service to the people of this district, this State and to the entire federal system. I say this also as a trial lawyer who tried his first case in the Southern District Court and also his last case before becoming a judge. Your judgments are weighty precedents, even with the judges of the Court of Appeals about 84 per cent of the time. Your judges serve on almost every committee of the Judicial Conference of the United States and thus serve to shape our laws and our procedures. It is in this district, more than in any other, that new laws are first construed and new methods for improving judicial machinery are first tested. The roll of honor from James Duane to your most junior judge boasts the names of many of our country's greatest judges; and in your court since 1789 most of our country's leading federal judges have sat by invitation and designation, or by virtue of their office as circuit judges. We have further evidence

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of that here today, as there are in our midst Judge Graven of Iowa and Judge Boldt from Tacoma, Washington.

The bench and bar of this country have always expected great things of this court; they look to you for leadership and they know that this court and each of its judges accept this challenge and will be worthy of it.

The spirit of our times and the ever-increasing demands of an affluent, complicated and litigious society require new solutions to old problems. It is not enough merely to multiply judges and personnel as the inexorable statistics of business tell us we must do; we must also remember to keep our larger organizations responsible to the needs of litigants and the bar so that no litigant and no lawyer will have reasonable grounds for feeling that his case has not received proper attention from a judge of the court.

There is no more difficult and demanding judicial position in this country than that of being a district judge for the Southern District of New York. Every day the judges of this court are asked to decide novel and complicated questions on short notice, sometimes in the midst of trial with a jury sitting in the box. We who sit in the tower try to have this constantly in mind. I hope that in order to continue and improve our understanding our circuit judges will continue to sit on your court to try cases and to participate in your labors from time to time so far as we are able. As you know, we have welcomed and we continue to welcome members of your court to sit in the Court of Appeals so that you may have a view of our labors and perhaps some sympathy for our occasional seeming lack of understanding about the district courts.

We judges hold our offices in trust, on condition that we exercise our brief authority in the public interest. Uppermost in our thoughts at all times must be the guiding principle that those whom we serve should be given no basis for feeling that we are not doing our utmost to administer justice according to law. It is by our courteous and prompt attention to the business of our courts that we merit the confidence of the public and of the bar. By your labors you have won this confidence of the public. We, your brothers, congratulate you on your achievements; we are confident that you will have the wisdom and the understanding, the integrity and the strength to meet the even greater demands of the future.

And now I bring you a message from our Circuit Justice, Mr. Justice Harlan, who greatly regrets that he cannot be with us on

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this occasion, and, therefore, a brief word before I read his remarks:

Justice Harlan has been a member of our judicial family for almost eleven years, from the time he took the oath as a circuit judge in March, 1954. His early labors at the bar were under the eyes of the judges of this court, for he first came to public office as an assistant United States Attorney for the Southern District in the Old Post Office Building in the spring of 1925, when John Cashin was his immediate chief. There I joined them later that year. The Southern District then had six judges with Augustus Hand as its chief. John Harlan knew all the judges and during his subsequent career as a trial lawyer he came to know well all those who later became judges of this court. As a circuit judge Judge Harlan sat in the district court and tried cases on one occasion, and it was one of his regrets that he did not do more trial work as a district judge. As you know, President Eisenhower allowed him only a few months in the tower before he was called to higher responsibilities in Washington. Although his labors have kept him out of the circuit most of the time, he has been a guiding light at all of our circuit conferences. As circuit judge he has kept well abreast of the work of the district courts and of our Court of Appeals. Ever ready to be of help, wise in counsel, understanding of the problems and the difficulties of all of our judges, he has been our great and strong support as our circuit justice.

I now read his remarks which he entitled "Thoughts On a 175th Anniversary":

"As a former member of this circuit and its present circuit justice, I am greatly pleased to have a part in these proceedings. As has been observed by others, the Southern District Court, until 1814 a part of the United States District Court for the District of New York, was the first federal court to be organized under the Judiciary Act of 1789, antedating by some three months the formal organization of the Supreme Court of the United States. During its existence the Southern District Court has played a leading part in the administration of federal justice, and its membership has included some of the truly great federal judges. The history and traditions of this court are something of which we New Yorkers can be justly proud. They have enriched both federal jurisprudence and the administration of federal justice.

"An occasion like this furnishes opportunity to say a word about the role of the district courts in the federal

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system. Their role, as I see it, has three basic aspects: First the federal district courts have the prime responsibility for keeping federal legal traffic expeditiously and justly moving; second, they play an indispensable part in the formulation of federal law; and, third, these courts should furnish the principal source for appointments to the federal appellate bench.

I

"It would be carrying coal to Newcastle to remark upon the heroic efforts of the Southern District to keep abreast of its business. It is not too much to say that this court has taken leadership in trying to break the back of calendar congestion, through the imaginative use of existing procedures, the devising of new ones, and, above all, hard work. Litigants, lawyers, and the whole federal judiciary owe a debt of gratitude for what is being done in this district to keep the wheels of justice moving.

"To say, however, that such efforts are not enough to solve the problem is not to belittle them. Is it not plain that the Southern District is undermanned both in judges and supporting personnel? Has not the time come when the providing of more judicial and supporting manpower for the federal courts in the busy litigating centers, let alone the prompt filling of vacancies in the existing judicial roster, should be disencumbered of the unbusinesslike and crippling political expedencies which now attend them? And does not the peculiarly exigent situation of the Southern District provide an ideal crucible in which to stir a fresh approach to these matters? In a country whose institutions and society rest so pervasively upon the 'rule of law,' is it not extraordinary, indeed challenging, to find that the total federal judicial budget is but some \$67,000,000 of the total national domestic budget of almost \$100,000,000,000?

II.

"The operations of the district courts are the barometer of whether the federal judicial system is working well, only passably, or poorly. For most federal litigation begins and ends with them. If prompt and true vindication of federal rights can be found there, the federal judicial system benefits at all levels; contrariwise, it is bound to suffer. No one with knowledge of the history of the Southern District Court and the

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calibre of its overall performance can doubt that it has measured up in these regards and that it will continue on course if given sufficient manpower to do the job.

“The district courts are also an important factor towards keeping the appellate courts on even keel. A poor trial record will lead, more often than not, to an unsatisfactory appellate decision. Sound principles of law, the establishment of which is the basic justification for an appellate system, are not likely to follow from sloppy trial records, no matter how able and acute the appellate tribunal may be. Good rules of law are born not of abstract notions but out of concrete factual situations, the proper development of which is the product of the industry and resourcefulness of a skillful trial bar and the objectivity of a conscientious and discriminating trial bench.

“I think this is no less true in the current swift pace of constitutional change than it is in the nonconstitutional field. These who work in the rarefied atmosphere of our judicial Mount Olympus are less likely to become unleashed into constitutional orbit if the ground controls are well managed by the lower courts. It is a mistake to consider that the making of constitutional doctrine lies solely with the Supreme Court. While under our system that tribunal of course bears the ultimate responsibility in this regard, the influence of the lower courts in constitutional law-making should not be minimized. A clear exposition from below as to why an existing constitutional principle should not be applied or expanded or a new one contrived, made in terms of the facts of a particular case and the longer range interests of the sound administration of justice, as seen by those on the firing line, will often make the difference between a wise or unwise decision above.

III.

“Finally, the district courts should be the prime source from which appointments to the appellate bench are made. Such a viewpoint, unfortunately not as prevalent here as in England, is supported not only by the considerations that make for the sound administration of any career system, but also by the fact that one who has had judicial experience at *nisi prius* is, other things being equal, likely to make a better appellate judge than one who has not had that exposure. If a personal note

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may be pardoned, I regret that such an experience did not fall to my lot.

"In summary, these brief observations add up to the proposition that the influence of the district courts upon the shaping of our federal system extends far beyond the function of initial adjudication. It is a theme that in my views of things is too often left unsung; I am gratified for the opportunity to participate in an occasion on which it is meet that it should be heard.

"On this 175th birthday party of the Southern District Court, I can extend to you, Chief Judge Ryan, and to your colleagues no better wish than that it may be given to all of you to carry on in the grand traditions of this court.

"Thank you very much."

JUDGE RYAN: I now present one who for many years has been a distinguished member of the bar of this court and who served as an Assistant Solicitor General of the United States, as president of the Legal Aid Society, as president of the Association of the Bar of the City of New York, and as president of the American Bar Association. I present Whitney North Seymour of the bar of this court.

MR. SEYMOUR: May it please your Honors and ladies and gentlemen, I am honored to speak for the bar on this fine occasion. I shall thus be able to note the pride which the bar has always had in the court and the satisfaction which we take in the spirit of comradeship between bench and bar in the cause of justice, which so notably prevails here. I am touched to have the place on this program which was occupied twenty-five years ago by my beloved former chief and partner, Thomas Day Thacher, who was an able judge of this court for five years before becoming Solicitor General. In that quarter century the active membership of the court has changed completely but its tradition has preserved its quality. We are all particularly grateful to Chief Judge Ryan, Judge Levet, Judge Dimock and Judge Bonsal and the others who worked with them for the benefits of their research, for arranging this occasion and for the interesting historical displays which we are to see shortly after the curtains are raised on them.

From the beginning, in addition to notable judges, the court has been aided by an outstanding bar. Much of the flower of the American bar practiced or appeared here. The recent notable study of the law practice of Alexander Hamilton, supported by the William Nelson Cromwell Foundation, shows his activities

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as an early leader. Such other well-remembered names as Edward Livingston, James Kent, Thomas Addis Emmet, Millard Fillmore, William M. Evarts, James C. Carter, Joseph H. Choate, George W. Wickersham, Charles Evans Hughes (Senior and Junior), Charles Neave, John M. Woolsey, William D. Mitchell, Robert P. Patterson and John W. Davis, to mention only a few, adorn the roster and contributed to the stature of the work of the court. The character of the court, the warm welcome it extends to young lawyers, insures that able lawyers will always enjoy appearing here and that its bar will remain notable. If there is occasional concern about maintaining the quality of advocacy, the court's own gentle pressures are likely to be the most effective restoratives.

The court and the bar, as Chief Judge Ryan indicated, have been fortunate in having a public bar, representing government as litigant and prosecutor, of the highest order, indeed setting a standard for the entire country. To mention only a few familiar names of the past, such United States attorneys as Benjamin F. Butler, Charles O'Connor, Elihu Root, Henry L. Stimson, Francis G. Caffey, Emory R. Buckner, George Z. Medalie and Martin Conboy left notable records. The fact that some judges of this court and of the Court of Appeals have faced problems from the prosecutor's side, did not, as some have feared, result in creating predispositions on their parts, but, in fact, has rather contributed to the objectivity, sophistication and excellence of their judicial service.

The members of the court's bar, private and public, have felt and feel a great pride in the court. We are proud of the quality of the judges and their loyalty to the traditions of the court. We are proud of their judicial independence and of their recognition of the importance of having an independent bar. Watching the accumulation of heavier and heavier judicial burdens of cases, many small, many of them tiresome, as, indeed, Judge Duane might have found that first case, *United States v. Three Boxes of Ironmongery*, and many of them "big," many of them back-breaking, we are grateful that the court has determined to deal with its serious calendar problems without sacrificing the dignity of the judicial process or being panicked into diluting it with preoccupation with mere speed.

Our pride in the district court has gone hand in hand with our pride in the Second Circuit, still, we think, the greatest of the courts of appeal, but this isn't their birthday and I shall leave it there.

Through the years we have been privileged to have outstanding members of the Supreme Court as our circuit justices. Their interest in the circuit has enriched the life of the judges and

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lawyers. To mention only some, we have had such outstanding justices as Nelson, Blatchford, Peckham, Hughes, Brandeis, Stone and Jackson. And the circuit was never more fortunate than its present circuit justice, Mr. Justice Harlan, whose work we admire and whose absence we feel and whose friendship for the bench and bar of the circuit means so much to all of us.

Our pride has not led us merely to sit quietly on the sidelines, applauding the judges and letting them struggle alone with their mounting problems. There is and always has been a wonderful spirit of partnership between the bench and the bar of the circuit. Problems have been recognized and faced jointly; the true administration of justice has been rightly seen to be a concern both of bench and bar. I will mention a couple of examples.

Some ten years ago it was evident that we needed a real circuit conference to nourish and implement this sense of partnership. Under Judge Clark's leadership, ably supported by his colleagues and by Chief Judge Ryan and his colleagues, and greatly encouraged by Mr. Justice Harlan, with the cooperation of the bar, there was established as good a conference as there is anywhere. The court's needs for increased manpower have always been supported actively by the bar, in Congress and elsewhere. When occasionally attacks have been made on the court's independence, the bar has been alert to perform its duty to defend the court. The bar has also tried to help maintain the quality of the membership of the court. I need only cite C. C. Burlingham's part in the appointment of Judge Learned Hand, the delegation from the bar which secured the appointment of Judge Medina and the efforts of the American Bar Association, and the organized bar generally, to see to it that appointments met high standards. Inadequate judicial salaries have been substantially increased, largely due to energetic action by the bar. The bar supported the court in procuring this court house in place of the handsome but inadequate old Post Office Building, and now the somewhat cramped quarters of the present court have led to the appointment of a committee of the bar to explore methods of mitigating that discomfort.

It may fairly be said that when the court has had a problem on which the bar could help, it has never been laggard. That this has been true from the earliest days is indicated by Judge Hough's reference to the fact that a committee of the bar submitted a set of rules for prize cases in 1812. I hope that wasn't the same committee that was appointed in 1790.

Long before the current awareness of the large problem of providing counsel for indigents in criminal cases, the court encouraged The Legal Aid Society, with Judge Knox taking the lead and with Orison Marden passing the hat to obtain necessary

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funds, to come into the court. Its service, The Legal Aid Society's service, and cooperation with the court may help to provide one of the models for the implementation of the new Criminal Justice Act.

We are glad to salute the court on this anniversary. There will be many changes in the court and its bar during the quarter century before the Two Hundredth Anniversary. But we can be confident that the standing of the court will remain at the zenith, and that the members of the bar then will find their hearts warmed with pride in the court, just as are ours today.

Thank you.

JUDGE RYAN: This concludes the ceremonies to be conducted in this room. There will now be opened in the main hall in the court house on the first floor an exhibition of material relating to the history of the court which has been arranged by the National Archives and Records Service and by the Federal Bar Association of New York, New Jersey and Connecticut.

The purpose for which this session of the court has been convened has been fulfilled and the clerk will adjourn this session.

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