



225th Anniversary
1789-2014

The Federal Court in New York: 225 Years and Counting

John D. Winter and Richard H. Maidman*



* Mr. Winter is a partner at Patterson Belknap Webb & Tyler LLP and Mr. Maidman is an associate at Patterson Belknap. Special thanks to Judges P. Kevin Castel and Deborah A. Batts for their insights and suggestions and to Patterson Belknap summer interns Claudia Cohen Green, Joseph Petro and Alexander Winter for their research and editorial assistance. A version of this article was first published as "Retelling the History of the United States District Court for the Southern District of New York" *NY Litigator*, Volume 17, Number 1 (Summer 2012). This article is printed with the permission of the New York State Bar Association and its Commercial and Federal Litigation Section.

Breathing life into the institutions created by the newly-ratified United States Constitution took some time.¹ Members of the House of Representatives and Senate needed to travel to New York, the seat of the new government. By the end of April 1789, both houses of Congress had achieved a quorum of its members and the new president, George Washington, had taken the oath of office.

Article III of the Constitution provided that “The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.” This meant that Congress had to act to create a judicial system. The historic Judiciary Act of 1789, signed into law on September 24, 1789, created the district courts and defined their jurisdiction. Many features of modern federal practice, such as removal of a case from state to federal court, found their origins in the Act.

Literally the day after the of the Judiciary Act became law, President Washington nominated James Duane, a member of the Continental Congress and the first Mayor of the City of New York after the evacuation of the British, to become United States District Judge for the District of New York. He was confirmed by the Senate the same day.

The Judiciary Act created a schedule of staggered openings for the 13 district courts in the new nation. New York and New Jersey were slated to be the first two courts to meet, both on the same day, the first Tuesday of November 1789. As it happened, Judge David Brearly of the District of New Jersey was ill and unable to hold its first session until December 22, 1789; indeed, he died the following summer.²

On Tuesday, November 3, 1789, District Judge James Duane convened Court at the Old Royal Exchange at Broad Street near Water Street. The New-York Daily Advertiser reported the event with this momentous dispatch: “On Tuesday, the Federal Court for the district of New-

York opened in the exchange; his Hon. Judge Duane, presiding; no business being before the court, the same was immediately adjourned.” The records of the Court indicate that 30 lawyers were admitted to practice that day.

The brief event was historic because it marked the first court of any type to sit under the new Constitution. The United States Supreme Court did not hold its first session until February 2, 1790. It was from the contours of the original District of New York that the Northern and Southern Districts of New York were created in 1814, the Eastern District of New York in 1865 and the Western District of New York in 1900. The Southern District of New York which encompasses the place where Judge Duane held the first session of Court is sometimes referred to as the “Mother Court.”³

This year marks the 225th anniversary of the Southern District, our nation’s “Mother Court.” In honor of this event, this brief history celebrates the contributions and achievements of the Court’s distinguished bench to our federal judiciary and to our nation as a whole.

Beginnings

The first case argued in the New York District Court was *United States of America v. Three Boxes of Ironmongery, Etc.*⁴ The case concerned the issue of how much the federal government was legally permitted to collect through customs, which would be the question in almost seventy-five percent of Judge Duane’s cases.⁵

After Judge Duane resigned in 1794 due to poor health, his successor, John Laurence, served approximately two years before leaving to take a seat in the United States Senate.⁶ Judge Laurence previously had served as a Judge Advocate and *aide de camp* to George Washington during the Revolutionary War,⁷ and he presided over the court martial of Major Benedict Arnold in 1779.⁸ Arnold was cleared of most of the charges,⁹ and served approximately eight more

months in the Continental Army before defecting to the British.¹⁰ Judge Laurence also sat on the historic military commission, alongside the Marquis de Lafayette, that tried Major John André, the British spymaster who managed Arnold's activities.¹¹ André was convicted and hung on orders signed by General Washington.¹²

Judge Laurence was the first District Court judge to have his conduct reviewed by the Supreme Court.¹³ In *United States v. Judge Lawrence*, the Supreme Court upheld Judge Laurence's denial of a writ of mandamus by the French Vice Consul for issuance of a warrant to apprehend a French sea captain accused of desertion.¹⁴

Approximately five months after the New York District Court convened, Chief Justice John Jay convened the first Circuit Court¹⁵ in New York, and much like the District Court, the Circuit Court in New York struggled to find its footing.¹⁶ Pursuant to the Judiciary Act of 1789, the Circuit Court: (a) consisted of any "two justices of the Supreme Court, and the District judge of such districts, any two of whom shall constitute a quorum"; (b) had both original and appellate jurisdiction; and were (c) was required to convene in New York two times per year.¹⁷

Because the Circuit Courts required the presence of at least one Supreme Court Justice to hold session, the Justices were constantly traveling throughout their allotted territories.¹⁸ Aside from the inefficiency of long-distance travel at the close of the eighteenth century, the fact that the Circuit Court for the District of New York had only heard forty-six cases in five years did not help the Justices' spirits.¹⁹ Because the stagnancy of its business proved embarrassing, and (it appears that) the Supreme Court Justices may not have always attended, the Circuit Court in New York would sometimes meet and then adjourn without transacting any business simply as a means of "keep[ing] up appearances."²⁰

The Circuit Courts were reorganized with the Judiciary Act of 1801, also known as the “Midnight Judges Act.”²¹ The 1801 Act doubled the number of Circuits from three to six and created three new judgeships per Circuit.²² Further, the 1801 Act removed bankruptcy cases from District Court dockets and added them to the Circuit Courts’ jurisdiction.²³ Under the 1801 Act, Supreme Court Justices no longer were required to preside at every Circuit Court session.²⁴ However, this change in judicial structure did not last long.

The Era of Little Things – 1800 to 1825

After the controversy of the 1801 Act and the infamous “midnight judges,” a more permanent remedy for the Circuit Court’s problems was enacted by Congress by way of the Judiciary Act of 1802. The 1802 Act reassigned a Supreme Court Justice to each Circuit, required the presence of only one Justice to hold a session of Court, and transferred the Circuit Courts’ jurisdiction over bankruptcy cases back to the District Courts.²⁵ Judge Brockholst Livingston would soon be assigned to New York’s Circuit, the renamed Second Circuit. Justice Livingston dedicated himself to the Circuit Court’s business, helping mold the Court into a significant “metropolitan tribunal.”²⁶

The nineteenth century also brought changes to the New York District Court.²⁷ Judge John Hobart, who served between 1798 and 1805, ushered in a new era.²⁸ Judge Hobart is recognized to be “the first [j]udge who regarded his judicial position as the fitting end of a life consistently devoted to legal work.”²⁹ For Judge Hobart, “the court was a permanency, and with him began the line of [j]udges who, once appointed, found in their judicial work professional occupation and inspiration.”³⁰ In 1805, President Jefferson appointed Matthias Tallmadge as Judge Hobart’s successor.³¹ The New York District Court’s caseload increased under Judge Tallmadge, so much so that Congress passed the Act of April 29, 1812, which required

additional terms of the New York District Court to be held in upstate New York.³² To accommodate these requirements, a second judge, William Peter Van Ness,³³ was appointed. Van Ness had served as Aaron Burr's "second" in Burr's famous duel with Alexander Hamilton in 1804.³⁴

There has been much debate about the relationship between Judges Van Ness and Tallmadge.³⁵ No matter where the blame is placed, the animosity between these two judges was a force behind the District of New York being split into separate Southern and Northern Districts in 1814, with Judge Van Ness presiding over the Southern District, and Judge Tallmadge over the Northern District.³⁶ Four years later in 1818, the five northernmost counties of the Southern District (Albany, Rensselaer, Schenectady, Schoharie, and Delaware) were transferred to the Northern District.³⁷

The First Busy Era – 1830 to 1900

It was not until 1827 that the aggregate work of the Second Circuit and its District Courts was sufficient to financially justify the printing of an official reporter.³⁸ Despite the seventeen years of opinions this reporter chronicled, it was still a slim volume, because the New York judges read opinions from the bench, and their manuscripts were considered their private property.³⁹ While a lack of commerce in the City of New York had hindered the Court's development, the Southern District could have increased its standing had its judges been more inclined towards reporting their decisions.⁴⁰

With the opening of the Erie Canal in the 1820s, more commerce came to New York City.⁴¹ With more trading came more disputes, which turned into litigation.⁴² And many of these disputes fell within the Southern District's burgeoning admiralty jurisdiction.⁴³ Along with the shipping boom in the 1820s and 1830s came population growth in New York City. From

1820 to 1830, New York City's population almost doubled to 200,000 residents – a staggering number when compared to the 30,000 inhabitants when Judge Duane was the District Court judge forty years earlier.⁴⁴

The increase in the Southern District Court's admiralty work was presided over by Judge Samuel Rossiter Betts, who became a leading contributor to the field of admiralty law as he took conscious steps to record and modernize it.⁴⁵ In 1828, Judge Betts established rules for the "Prize Court," and a decade later, published the first work on American admiralty practice.⁴⁶ The Southern District's admiralty practice continued to grow during Judge Betts' 40-year tenure, covering "questions of prize, blockade and contraband, resulting mainly from captures of enemy property by United States vessels in the blockade of Confederate ports."⁴⁷

In addition to its growing admiralty practice, the Southern District's caseload expanded in the mid-nineteenth century because of perceived procedural advantages of federal court, and a New York bar adept to make the most of them. Procedurally, the federal courts had two distinct advantages over state courts in the mid-nineteenth century. The first was the federal courts' liberal rules for gathering evidence.⁴⁸ The second was the federal courts' diversity jurisdiction, allowing a party to elect to bring its claim in federal court, rather than state court, which in contrast, required consent from both parties.⁴⁹ These advantages might not have been worth anything, were there not attorneys talented enough to use them for their clients' advantage. As Judge Weinfeld put it, the New York bar was nothing less than "illustrious."⁵⁰ This reputation attracted litigation to the Southern District, expanding the Court's business in the process.⁵¹

By the Civil War, the business of the Southern District had grown so great that it was becoming too much for one man to handle, even one of such "extraordinary industry,"⁵² as Judge Betts. Rather than appoint a second judge for the Southern District, Congress passed the Act of

February 25, 1865, which again split the Southern District and created a new Eastern District.⁵³

The Circuit Courts also were reformed a few years later when Congress passed the Act of April 10, 1869, which created a permanent judgeship in each Circuit, with the authority to hear cases involving original and appellate jurisdiction.⁵⁴ And the new judgeship in the Second Circuit was essential to addressing the Circuit's increasing equity workload.⁵⁵ These appointed Circuit judges had the authority to hear cases and issue opinions without the presence of a Supreme Court Justice riding Circuit.⁵⁶ Despite these changes directed towards increasing the jurisdiction and workload of the Second Circuit, the docket of the Southern District in the second half of the nineteenth century still was overwhelming.⁵⁷ The Southern District was so overburdened that Charles Benedict, the first judge of the Eastern District, was given jurisdiction by Congress to hear criminal cases from the Southern District.⁵⁸ This action made Judge Benedict essentially the only criminal trial judge in the Southern or Eastern Districts of New York for almost thirty years.⁵⁹

During the Civil War period, Judge Betts presided over a number of "prize cases" that would make their way to the United States Supreme Court. In *The Hiawatha*,⁶⁰ before Judge Betts, the United States government had captured a number of commercial vessels as "prizes of war" under President Lincoln's proclamation that enemy ports be blockaded.⁶¹ One of the ships, the *Hiawatha*, was a British ship that had sailed to Richmond with a cargo of salt, and which intended to bring a load of cotton and tobacco back to England.⁶² While the *Hiawatha* was in Richmond, the United States instituted a blockade of the city's port.⁶³ The *Hiawatha* attempted to skirt the blockade, and was captured.⁶⁴ The owners of the cargo and ship argued that the United States had no right to confiscate their property, but Judge Betts disagreed and ordered a "[s]entence of condemnation of the vessel and cargo for a violation of the blockade."⁶⁵ Judge

Betts's decision was upheld by the United States Supreme Court in the *Prize Cases*,⁶⁶ which affirmed the constitutionality of President Lincoln's orders. The Southern District's status as the nation's premier admiralty court continued under Judges Samuel Blatchford (who eventually joined the United States Supreme Court in 1882),⁶⁷ William Gardner Choate and Addison Brown after the resignation of Judge Betts.⁶⁸ Judge Blatchford was the first judge in the United States to sit on the district court, circuit court, and Supreme Court benches during his career.

When Congress passed the Bankruptcy Act of 1867, which gave the District Courts original jurisdiction as "courts of bankruptcy," the Southern District took on increased responsibilities.⁶⁹ The Bankruptcy Act of 1867 provided for both voluntary and involuntary bankruptcies, and allowed District Court judges to appoint "registers in bankruptcy" "to assist the judge of the district court in performance of his duties."⁷⁰ These registers were the predecessors to the referees and bankruptcy judges of today.⁷¹ However, the Bankruptcy Act of 1867 was short-lived; upon its repeal in 1878,⁷² Judges Choate and Brown were able to concentrate on admiralty cases once again.⁷³ But bankruptcy would return as a core competency of the Southern District with the passage of the Bankruptcy Act of 1898.

The 1898 Act transferred jurisdiction over bankruptcy cases back to the District Courts and was revolutionary in its coverage.⁷⁴ It provided bankruptcy protection to corporations as well as individuals, and again included the prospect of both voluntary and involuntary bankruptcies.⁷⁵ Further, the 1898 Act empowered bankruptcy trustees to unwind preferential and fraudulent transfers to avoid preferencing certain creditors.⁷⁶ In 1900, nearly 1,400 bankruptcy cases were initiated in the Southern District, which was more than the combined total of all other new filings in the court that year.⁷⁷ Congress responded to the Southern District's increased caseload by creating a second judicial position for the District in 1903.⁷⁸

The end of the nineteenth century also saw changes for the Northern District of New York.⁷⁹ In 1900, Congress split the Northern District, creating the District Court for the Western District of New York, and assigned the seventeen western-most counties of the state to the newly formed Western District.⁸⁰

The structure of the Circuit Courts also changed during the second half of the nineteenth century. By the late 1880s, it became clear that the Circuit judge positions created in 1869 were less effective than originally hoped for by Congress.⁸¹ Although business seemed to be running smoothly, the Circuit Court gradually began accumulating a “‘Customs Calendar’ made up of actions at law to recover from the Collector of Customs illegally exacted import duties.”⁸² By 1885, it reached the point where processing all of these cases proved too formidable a task for the Circuit judge to handle on his own.⁸³ That same year, much like what would be done for the Southern District a little over a decade later, Congress appointed a second Circuit judge, E. Henry Lacombe, to dispose of the accumulated customs cases.⁸⁴

In 1891, only four years after the appointment of the second Circuit judge, Congress passed the Circuit Court of Appeals Act, which changed the make-up of the federal courts and served as the first step towards the creation of the federal courts as we know them today.⁸⁵ The 1891 Act transferred the appellate jurisdiction of the Circuit Court to the newly formed Circuit Court of Appeals.⁸⁶ Cases of original jurisdiction dwindled, and without appellate jurisdiction, there was not much left for the Circuit judges to do.⁸⁷ As the Circuit Court faded, the District Courts, including the Southern District, began to unofficially absorb their responsibilities.⁸⁸ Finally, in 1912, the Circuit Courts were abolished, and Congress transferred all Circuit Court records and jurisdiction to the District Courts.⁸⁹

The Pre-Modern Era: 1912 to 1958

With the absorption of the Circuit Court's business, the Southern District's workload rapidly increased.⁹⁰ At the turn of the century, the New York City economy was booming, as was the population.⁹¹ In addition, expanded federal control over different private and public activities boosted the Southern District's caseload.⁹² As the caseload increased, so did the number of District Court judges. In 1906, a third judge was appointed to the Southern District, the first historian of the Court, Judge Hough.⁹³ In 1909, when Congress felt the need to add a fourth judge, Learned Hand was appointed to the Southern District.⁹⁴ Judge Hand would serve fifteen years in the Southern District before moving on to the Second Circuit.⁹⁵ In 1914, Learned Hand's cousin, Augustus Hand, was appointed to the Southern District bench.⁹⁶ The Judges Hand would serve together on the District Court, and together again on the Court of Appeals.⁹⁷ When Judge Hough was appointed to the Court of Appeals in 1916, he was succeeded by Martin T. Manton, who quickly followed Judge Hough to the Court of Appeals.⁹⁸ Judge Manton was succeeded in 1918 by Judge John C. Knox, who would preside in the Southern District into the 1950s.⁹⁹ When Judge Knox left the bench, his thirty-seven year tenure had been exceeded only by Judge Betts.¹⁰⁰ The current record-holder for longest tenure in the Southern District is Judge David Edelstein, who served forty-eight years and nine months. During Judge Knox's tenure, the number of judges in the Southern District more than tripled. Despite this increase in authorized judgeships, the Southern District judges' caseloads remained full.

Two cases that kept the Southern District bench busy during this period arose from the tragedies involving the famous ships *Titanic* and *Lusitania*. In 1913, Judge George Chandler Holt presided over a petition by the owner of the *Titanic* to limit its liability in claimants' suits stemming from the tragedy.¹⁰¹ The main question assessed by Judge Holt was whether the law

of the United States or Great Britain applied.¹⁰² If the law of United States were to be applicable, then the owner would have been entitled to limit liability under the Limited Liability Act of March 3, 1851, but if the law of Great Britain were to apply, then the owner would have been potentially liable for significant damages.¹⁰³ Judge Holt found that the petitioner could not take advantage of United States law, especially considering the uncontradicted facts that “[t]he Titanic was a British ship, owned by a British company, which foundered in mid-ocean from collision with an iceberg.”¹⁰⁴ However, the Supreme Court would later disagree with Judge Holt.¹⁰⁵

In the *Lusitania* case, Cunard Steamship Company, Ltd., the owner of the sunken ship, petitioned for an adjudication of liability as to claims against it brought by victims and other parties.¹⁰⁶ While the *Lusitania* was sailing from New York to Liverpool in 1915 during World War I, a German submarine torpedoed and sunk the oceanliner off the coast of Ireland,¹⁰⁷ resulting in over 1,000 deaths.¹⁰⁸ Judge Julius Mayer found that Cunard was not liable for negligence, and that the proximate cause of the disaster was the illegal actions of the German government.¹⁰⁹ Holding that the shipping line was not liable, Judge Mayer powerfully wrote, “[W]hile, in this lawsuit, there may be no recovery, it is not to be doubted that the United States of America and her Allies will well remember the rights of those affected by the sinking of the Lusitania, and, when the time shall come, will see to it that reparation shall be made for one of the most indefensible acts of modern times.”¹¹⁰

The Court remained busy between 1920 and 1932, due to an increase in civil and criminal cases in the Southern District.¹¹¹ The passage of the Eighteenth Amendment, which prohibited the sale of “intoxicating liquors,” was one of the primary reasons for the full docket.¹¹² Prohibition took effect in January 1920, and that year, the Southern District court saw four times

as many new cases filed in a single year than in the previous decade.¹¹³ Crime seemed to go hand-in-hand with prohibition. In fact, from 1927 to 1930, more than 90 percent of criminal cases disposed of by the Southern District, in one way or another, involved liquor.¹¹⁴

One of the few Eighteenth Amendment cases to be addressed by the Supreme Court was tried in the Southern District before Judge Knox. In 1923, the Dean Emeritus of the College of Physicians and Surgeons of Columbia University, Dr. Samuel W. Lambert, received protection from Judge Knox to prescribe spirits to sick patients for medicinal purposes.¹¹⁵ However, three years later, the Supreme Court reversed Judge Knox's ruling in *Lambert v. Yellowley*,¹¹⁶ holding that the practice of medicine was fully subject to the police power of the States.¹¹⁷

One of the Court's non-liquor cases that gained headlines during the 1920s occurred in the aftermath of the infamous "Teapot Dome" scandal, in which then Secretary of the Interior Albert Fall had leased Navy oil reserves in Teapot Dome, Wyoming, to private oil companies in return for significant personal "loans."¹¹⁸ In 1926, Harry Daugherty, who had been Attorney General of the United States under President Warren Harding during the scandal, was indicted and then tried before Judge Knox¹¹⁹ in the Southern District for allegedly conspiring to defraud the government related to a deal involving assets of the American Metal Company.¹²⁰ Daugherty was acquitted "because of the favorable vote of one juror."¹²¹ Almost 40 years after Daugherty's acquittal, the Southern District again would be the venue for criminal trials of a president's cabinet members.

At the end of 1933, the growth and expansion of the Southern District's caseload was briefly subdued when the Twenty-First Amendment was ratified, and the Eighteenth Amendment prohibition on the sale of alcohol was repealed.¹²² The reduction in the Southern District's

business would not last very long, though, with the legal, economic, and political changes that came with the New Deal and the end of World War II on the horizon.¹²³

It was during this “slow period” that some of the most remembered Southern District opinions were written. One of these cases was *Tompkins v. Erie R.R.*, assigned to Judge Samuel Mandelbaum.¹²⁴ In *Erie*, the plaintiff, Harry Tompkins, a citizen of Pennsylvania, was walking on a path alongside railroad tracks in Hughestown, PA, when a train operated by the Erie Railroad, a New York company, passed by. An object protruding from one of the cars knocked Tompkins to the ground, and his right arm was run-over by the wheels of the train.¹²⁵ Judge Mandelbaum applied federal common law, as necessitated by *Swift v. Tyson*, and required that the plaintiff prove ordinary negligence. Judge Mandelbaum ignored the defendant’s argument that Pennsylvania’s duty of care was applicable, which would have likely absolved the defendant from liability.¹²⁶ *Erie* was affirmed by the Second Circuit, and, as every lawyer knows, the Supreme Court took the case. Justice Brandeis wrote the Court’s opinion reversing the decisions of the lower courts. No longer was *Swift v. Tyson* good law; District Courts sitting in diversity were, and still are, required to apply the laws of the states in which they sit.¹²⁷ *Erie* would become one of the most-cited cases of all time.¹²⁸

In addition, Judge Francis Caffey presided over the seminal antitrust case *United States v. Aluminum Co. of America* (“*Alcoa*”)¹²⁹ during this period. In *Alcoa*, the Department of Justice charged the defendants with a laundry list of antitrust violations, including monopolization of the foreign market for aluminum in the United States. Judge Caffey dismissed the case, holding that the Government had failed to show intent to monopolize in violation of the Sherman Act.¹³⁰ At the time, the *Alcoa* trial was one of the most time-intensive trials in U.S. history. It took more than five years (nearly seven months of trial days) to complete.¹³¹ Trial records numbered

approximately 58,000 pages, and Judge Caffey's long opinion took nine days to read.¹³² Despite Judge Caffey's diligence, his decision was reversed by the Second Circuit. In its decision, authored by Judge Learned Hand, the Second Circuit found Alcoa guilty of monopolization, because it controlled ninety percent of the virgin aluminum market — such a large market share was evidence enough to hold Alcoa liable.¹³³ Judge Hand wrote, “[Alcoa] insists that it never excluded competitors; but we can think of no more effective exclusion than progressively to embrace each new opportunity as it opened, and to face every newcomer with new capacity already geared into a great organization, having the advantage of experience, trade connections and the elite of personnel.”¹³⁴ The *Alcoa* opinion is now one of the foundations of United States antitrust law, and has been cited as precedent in over 800 cases.

When World War II ended, there were over 5,800 civil cases pending in the Southern District.¹³⁵ In two years, the number of pending cases almost doubled, even though 4,700 cases in the Southern District were terminated in 1947.¹³⁶ In 1948, the civil caseload per judge in the Southern District of New York was 614 cases, while the national average was only 271.¹³⁷

As the Cold War began to intensify in the late 1940s, the high-profile trials of Alger Hiss and Ethel and Julius Rosenberg were held in the Southern District. Hiss, a former State Department employee, was accused of spying for the Soviet Union.¹³⁸ He was tried on perjury charges stemming from testimony he had given to a grand jury investigating alleged Communist espionage.¹³⁹ Hiss's first trial, before Judge Samuel Kaufman, resulted in a hung jury,¹⁴⁰ but Hiss was convicted upon retrial before Judge Henry Goddard.¹⁴¹ Ethel and Julius Rosenberg were tried in 1951 before Judge Irving Kaufman for giving nuclear secrets to the Soviets.¹⁴² Both were convicted and received the death penalty.¹⁴³

In the early 1950s, the amount of litigation involving the federal government began to shrink, but this was offset by an increase in private civil litigation, which proved more difficult and time-consuming for the Southern District judges to address.¹⁴⁴ Due to this increasing workload, there were dynamic changes in store for the Southern District, both in the faces and number of judges on the Court.¹⁴⁵

Prompted by the high post-war caseloads, four judges, John F. X. McGohey, Irving R. Kaufman, Gregory F. Noonan, and Sydney Sugarman, were appointed to the Southern District bench.¹⁴⁶ However, shortly after these appointments, the Court faced the death of Judge Hulbert and the resignation of Judge Rifkind.¹⁴⁷ And although Judge Rifkind was succeeded by Judge Weinberg, the Southern District remained undermanned and overwhelmed.¹⁴⁸

By 1954, civil caseloads were reaching new highs, criminal matters were accumulating, and on top of that, Judges Goddard and Leibell retired.¹⁴⁹ Later that year, those vacancies, along with two new appointments, were filled by Archie O. Dawson, Lawrence E. Walsh, Alexander Bicks and Edmund L. Palmieri.¹⁵⁰ Between 1955 and 1958, the Southern District judges were able to reduce the Court's pending caseload by 2,000 cases.¹⁵¹

With good intention, Congress passed the Jurisdiction Act of 1958, which was meant to reduce the total amount of federal litigation.¹⁵² However, because the 1958 Act deemed "a corporation a citizen not only of the State of its incorporation but also of the State of its principal place of business, and most large corporations, while not incorporated in New York, [had] their principal place of business there,"¹⁵³ the Act actually increased the caseload of the Southern District.¹⁵⁴

The Modern Era: 1959 to the Present

Upon the retirement of Judge Clancy in 1959, the Southern District was reduced to sixteen active and six senior judges.¹⁵⁵ Still, the Southern District had the largest complement of federal judges in any District in the United States.¹⁵⁶ Despite the size of the Southern District bench, a Judicial Conference recommended six new judges be added because of the large volume of cases.¹⁵⁷ Between 1961 and 1963, the Southern District was expanded with eight nominations made by President John F. Kennedy. These appointments were crucial to the functioning of the Southern District, as its caseload during the early 1960s constituted between eighteen and twenty percent of all pending civil litigation in the entire federal court system.¹⁵⁸

One of the new judges who joined the Southern District in 1966 was Judge Constance Baker Motley.¹⁵⁹ When Judge Motley was appointed by President Lyndon B. Johnson, she was the first woman and first African-American to sit on the Southern District bench, and the first African-American woman to sit on *any* federal bench in the United States. Judge Motley would serve as Chief Judge of the Southern District from 1982 to 1986 and remained on the bench until her death in 2005.¹⁶⁰ She paved the way for the many women who subsequently have been appointed to judgeships in the Southern District, including Judge Sonia Sotomayor,¹⁶¹ who now sits on the United States Supreme Court. Today, the Southern District bench, as well as the federal bench as a whole, has grown increasingly diverse. This positive trend started with Judge Motley.

Over the past fifty years, Southern District judges have conducted trials in many significant cases. For example, in 1961, Judge Lloyd MacMahon presided over the trial of Carmine Galante, boss of the Bonanno crime family, who ultimately was convicted of drug-trafficking.¹⁶² During the trial, Galante and other defendants threw objects and shouted

obscurities, which prompted Judge MacMahon to have them handcuffed, shackled, and gagged so the trial could continue in an orderly fashion.¹⁶³ Many view Judge MacMahon's response to these outbursts as the precedent today, which allows federal judges to assert control over unruly courtrooms.¹⁶⁴

In 1971, Judge Murray Gurfein was tasked with presiding over one of the most important First Amendment cases in our nation's history, involving whether the federal government could enjoin the New York Times from publishing a segment of the classified "Pentagon Papers."¹⁶⁵ The Pentagon Papers were a secret Department of Defense history of the government's decision-making process on Vietnam between 1945 and 1967.¹⁶⁶ Finding that the government was not entitled to a preliminary injunction, Judge Gurfein wrote, "[t]he security of the Nation is not at the ramparts alone. Security also lies in the value of our free institutions. A cantankerous press, an obstinate press, a ubiquitous press must be suffered by those in authority in order to preserve the even greater values of freedom of expression and the right of the people to know."¹⁶⁷ Judge Gurfein's decision was reversed by the Second Circuit, but reinstated by the Supreme Court.¹⁶⁸

The government scandals of the 1970s led to the highly publicized Mitchell-Stans trial conducted in the Southern District.¹⁶⁹ In a criminal trial before Judge Lee Parsons Gagliardi, former Attorney General, John Mitchell, and former Commerce Secretary, Maurice Stans, were tried for criminal conspiracy, obstruction of justice and perjury.¹⁷⁰ The Government alleged that the two men had impeded a Securities and Exchange Commission investigation of financier Robert Vesco in return for a secret contribution of \$200,000 to President Nixon's 1972 campaign.¹⁷¹ After a forty-eight day trial, the jury acquitted Mitchell and Stans on all counts, although Mitchell would be found guilty of similar charges one year later, related to his role in the Watergate cover-up.¹⁷²

In the late 1970s, the Southern District asserted itself as a forum for addressing securities law matters, particularly insider trading in violation of Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5.¹⁷³ In 1978, Judge Richard Owen presided over *United States v. Chiarella*,¹⁷⁴ where the defendant, an employee of a financial printer, bought shares of companies he knew were about to be acquired through tender offers prior to public dissemination of the information. At trial, the defendant was found guilty of insider trading.¹⁷⁵ *Chiarella* made its way to the Supreme Court, which reversed the conviction, holding that Section 10(b) liability is “premised upon a duty to disclose . . . arising from a relationship of trust and confidence between parties to a transaction.”¹⁷⁶ In response to the *Chiarella* decision, the SEC promulgated Rule 14e-3, which forbid any trading on the basis of material nonpublic information regarding tender offers by anyone with knowledge that the information originated from an insider.¹⁷⁷

The 1980s opened with an event at the Southern District worthy of a made-for-television movie.¹⁷⁸ For years, inmates facing trial at the Southern District’s 40 Centre Street courthouse were housed nearby at the Metropolitan Correctional Center (“MCC”). The twelve-story complex contained an inmate exercise area on the roof, which was enclosed by a heavy wire screen.¹⁷⁹ One Sunday morning in 1981, a group of inmates, including a convicted narcotics dealer, captured a prison guard and held him hostage on the roof.¹⁸⁰ In the meantime, armed accomplices hijacked a sightseeing helicopter and attempted to land on the roof of the MCC to ferry the convicted drug dealer to safety.¹⁸¹ However, the helicopter could not break through the MCC’s thick wire mesh, and the plan was foiled.¹⁸²

There were many notable trials in the Southern District during the 1980s involving individuals associated with organized crime, politicians, and Wall Street financiers. One of the most famous financiers facing criminal charges in the 1980s was Drexel Burnham executive

Michael Milken. Milken was investigated by the FBI and indicted on ninety-eight counts of racketeering, mail fraud, securities fraud and other crimes.¹⁸³ However, this case never went to trial because Milken pled guilty to six securities and reporting violations.¹⁸⁴ He was sentenced to ten years imprisonment, of which he served two before his release.¹⁸⁵ In the Milken investigation, law enforcement was aided by Ivan Boesky, a Wall Street arbitrageur, who informed on Milken's activities. Boesky himself was charged with insider trading and accepted a plea bargain for which he received a \$100 million fine and three years in prison.¹⁸⁶

Another famous Rule 10b-5 trial, similar to *Chiarella*, was held in the Southern District in 1985 before Judge Charles Stewart. The government alleged that R. Foster Winans, a Wall Street Journal reporter best known for his "Heard on the Street" column, leaked information about the contents of his column before it was published, which allowed his associates to make significant profits.¹⁸⁷ After a bench trial, Judge Stewart found Winans and two co-defendants guilty of violating 15 U.S.C. §§ 78j, 78ff, Rule 10b-5, and federal mail and wire fraud statutes.¹⁸⁸ The conviction was eventually upheld by the Supreme Court in *Carpenter v. United States*,¹⁸⁹ where the Supreme Court split 4-4.

In terms of corruption and organized crime cases in the Southern District, one of the more significant cases was the 1985 "Pizza Connection Trial," before Judge Pierre Leval.¹⁹⁰ The trial focused on drug distribution and money laundering in pizza parlors across the United States.¹⁹¹ Nineteen defendants were tried in what is still one of the longest trials ever to be held in the Southern District, lasting approximately fifteen months.¹⁹² Nearly all of the defendants were found guilty.¹⁹³ Perhaps more notable than the "Pizza Connection" trial was the "Mafia Commission" trial.¹⁹⁴ In that case, eight defendants, including heads of New York's "Five Families," were tried on charges including extortion, racketeering, labor payoffs, and loan-

sharking.¹⁹⁵ After a jury found all of the defendants guilty, Judge Richard Owen sentenced most of the defendants to 100 years in prison.¹⁹⁶

Government corruption again was put in the spotlight when Stanley Friedman, the former Bronx Democratic Party chairman, was tried before a Southern District judge for brokering bribes in connection with a lucrative computer contract given by the city Parking Violations Bureau. The trial was supposed to be held in the Foley Square Courthouse, but the location was moved to New Haven, due to the publicity surrounding the case. Judge P. William Knapp made the trek to New Haven to preside over the trial, and Friedman was found guilty of racketeering, conspiracy and mail fraud.¹⁹⁷

In the 1990s, the caseload of the Southern District continued to include high-profile organized crime cases, as well as securities and financial fraud prosecutions.¹⁹⁸ Regrettably, the Southern District was also tasked with addressing the aftermaths of many of the decade's tragic terror plots. The trial of Ramzi Yousef, who orchestrated the 1993 World Trade Center bombing, was held in the Southern District in 1997. Found guilty, Yousef was sentenced by Judge Kevin Thomas Duffy to life in prison without parole.¹⁹⁹ Other terrorism prosecutions conducted in the Southern District in the 1990s included the "Manila Air Conspiracy" and "Blind Sheikh" trials.²⁰⁰ The trial relating to the 1998 bombings of U.S. embassies in Kenya and Tanzania was held in the Southern District in 2001.²⁰¹

With the construction of the Daniel Patrick Moynihan U.S. Courthouse in 1994, the Southern District was given an additional home to its base at the Thurgood Marshall U.S. Courthouse at 40 Centre Street, where it had held trials since 1936. This new location added to a previous expansion of the Southern District's "physical plant," when the United States Courthouse in White Plains opened in 1983.²⁰² No matter where the Southern District judges

have sat, their contributions to the evolution of legal doctrines in this country have been significant. Between 1980 and 2000, seventy-six rulings from the Southern District were reviewed by the Supreme Court. We are not aware of another District in the country which has had as many of its rulings reviewed by the Supreme Court, in a comparable period.

Moving into the twenty-first century, the Southern District continued to preside over significant civil and criminal litigation.²⁰³ A number of these cases have been high-profile insider trading affairs. For example, in 2004, media magnate Martha Stewart was found guilty of obstructing justice and lying to investigators about insider trading, in a trial presided over by Judge Miriam Cedarbaum.²⁰⁴ Most recently, Raj Rajaratnam, the former CEO of the Galleon hedge fund, was found guilty in the Southern District of fourteen counts of securities fraud and conspiracy.²⁰⁵ Rajaratnam's illicit trading had generated profits/avoided losses of \$72 million.²⁰⁶ The eleven-year sentence administered by Judge Richard Holwell was the longest sentence ever imposed for insider trading to date.²⁰⁷

On the antitrust front, the importance of *Verizon Commc'ns Inc. v. Law Offices of Curtis V. Trinko, LLP*²⁰⁸ rivals that of *Alcoa*, decided close to fifty years earlier. *Trinko* was a class action where customers of AT&T, which was a new entrant to the New York City local phone services market, sued Bell Atlantic (which would become Verizon) for refusing to allow AT&T to use its existing network and provide retail services at wholesale rates, as required by the Telecommunications Act of 1996.²⁰⁹ Judge Sidney Stein granted the defendant's motion to dismiss the case, stating that "[e]ven a monopolist, however, has no general duty under the antitrust laws to cooperate with competitors."²¹⁰ Judge Stein was reversed by the Second Circuit, which, in turn, was reversed by the Supreme Court. Justice Scalia, writing for the majority, ruled along the same lines as Judge Stein that the Sherman Act does not require a company to

cooperate with a competitor. Nor does it restrict a company from exercising “independent discretion as to parties with whom he will deal.”²¹¹ The *Trinko* decision has had a significant impact on the “essential facilities” doctrine, as well as more general “refusal to deal” cases.²¹²

Of late, bankruptcy proceedings have come to the forefront of the Southern District’s docket. In 2002, Worldcom filed for bankruptcy in the Southern District in the largest bankruptcy proceeding ever conducted at that time in the United States.²¹³ The Worldcom bankruptcy was only the first of several significant bankruptcy cases brought in the Southern District in the past ten years. On September 15, 2008, Lehman Brothers filed for bankruptcy protection in the Southern District. Bankruptcy Judge James Peck was assigned to the case and faced the daunting task of satisfying over 100,000 creditors and managing Lehman’s \$639 billion in total assets and \$613 billion in total debt.²¹⁴ The Lehman bankruptcy eclipsed Worldcom as the largest bankruptcy in U.S. history, and Lehman assets are still being divided to this day.

Nine months after the Lehman filing, General Motors filed for reorganization in the Southern District, in what would be the fourth largest bankruptcy in the country’s history.²¹⁵ Bankruptcy Judge Robert Gerber supervised an asset sale in which the federal government bought over half of the iconic company.²¹⁶ Bankruptcy proceedings for Chrysler soon followed before Bankruptcy Judge Arthur J. Gonzales in the Southern District. Judge Gonzales ordered a sale of assets which the Supreme Court essentially endorsed by choosing not to review Judge Gonzales’ ruling.²¹⁷ The management of these bankruptcies is evocative of the Southern District’s bankruptcy prowess at the turn of the twentieth century.

For many, the Lehman bankruptcy signaled the legal beginning of the financial crisis that engulfed the United States. Since then, the Southern District has played an important role in determining which actors contributed to the economic troubles and addressing the consequences

of risky decision-making by financial institutions. Perhaps the most significant of these cases involved Bernard Madoff's Ponzi scheme, in which investors were defrauded of over \$18 billion dollars.²¹⁸ Madoff pled guilty to eleven felonies before Judge Denny Chin.²¹⁹ At sentencing, Madoff's lawyers requested no more than a twenty-year sentence, taking into account his advanced age.²²⁰ Describing Madoff's behavior as an "extraordinary evil," Judge Chin sentenced him to 150 years in prison.²²¹

One case originating in the Southern District in 2003, *Twombly v. Bell Atlantic Corp.*,²²² has had sweeping effects on all federally filed lawsuits, and is approaching the same significance that *Erie* attained seventy-five years ago. In *Twombly*, the plaintiffs brought a class action lawsuit alleging that the defendants had conspired to prevent competitive entry into the local telephone and internet services markets in violation of § 1 of the Sherman Act. Judge Gerard Lynch dismissed the suit for failure to state a claim. After the Second Circuit reversed, the Supreme Court reinstated Judge Lynch's decision. Prior to *Twombly*, the notice pleading standard to overcome a motion to dismiss was minimal. As the Supreme Court had written in *Conley v. Gibson*,²²³ "[a] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." The *Twombly* Court adopted a stricter "plausibility" standard, stating that "[t]he need at the pleading stage for allegations plausibly suggesting (not merely consistent with) agreement reflects the threshold requirement of Rule 8(a)(2) that the 'plain statement' possess enough heft to 'sho[w] that the pleader is entitled to relief.'"²²⁴ Any doubt that the stricter plausibility standard would be confined to antitrust cases was dispelled in *Ashcroft v. Iqbal* (a case from the Eastern District),²²⁵ decided by the Supreme Court two years after *Twombly*.²²⁶

Unfortunately, terrorism and violent crime has remained on the Southern District docket in the 21st century. In 2010, Judge Miriam Cedarbaum sentenced Faisal Shahzad to life in prison for attempting to detonate an explosive device in Times Square.²²⁷ Abduwali Muse, one of the Somali pirates responsible for the hijacking of the cargo ship *Maersk Alabama*, captained by Richard Phillips, pled guilty and was sentenced by Judge Loretta Preska in 2011.²²⁸ In March 2014, in a trial before Judge Lewis Kaplan, Osama Bin Laden's son Sulaiman Abu Ghaith was found guilty of conspiring to kill Americans, and providing material support to terrorists.²²⁹

While the Southern District has maintained its renown for handling high-profile trials and proceedings during the last decade, it also has served as an innovator, as it did with admiralty and bankruptcy in the nineteenth century, and securities law and antitrust in the twentieth century. The Southern District is one of fourteen district courts selected to participate in a ten-year program aimed at increasing judicial experience in patent cases.²³⁰ As part of this program, ten Southern District judges have been designated patent pilot participants.²³¹ It is the hope that this program will increase judicial capacity and efficiency in this technical field.²³² In addition, the Southern District recently implemented programs to improve judicial case management of certain types of civil rights cases and complex civil lawsuits.²³³

Final Thoughts

Over the past 225 years, 154 judges, 132 men and 22 women, have served as federal judges in the District of New York and its successor the Southern District of New York. It has evolved from a one-man court led by Judge Duane, to a twenty-eight seat active bench (with twenty-two senior judges), which has presided over some of the most significant cases in this country's history. Judge Duane waited five months before the first case was filed in his court; today, nearly twenty-eight cases per day are filed on average in the Southern District.²³⁴ Alumni

of the Southern District bench have continued their commitments to public service by serving in some of the nation's highest posts, including Judges Blatchford and Sotomayor as Supreme Court Justices, Judge Laurence as a United States Senator, Judge Robert Patterson, Sr. as Secretary of War. Judge Michael Mukasey as Attorney General, and Judge Louis Freeh as Director of the Federal Bureau of Investigation. The judges of the Southern District not only continue to handle a high volume of cases, but also adjudicate some of the most complex of cases in our federal system. As former Chief Justice of the U.S. Supreme Court Charles Evans Hughes Sr. remarked, "Courts are what the judges make them and the District Court in New York [from its inception] has had a special distinction by reason of the outstanding abilities of [the men and women] who have been called to its service."

¹ Eighty years ago, Judge Charles Merrill Hough provided a history of the first 130 years of the "Mother Court," the United States District Court for the Southern District of New York. Some years later, Judge John Knox's autobiography added to Judge Hough's description of the Court's development. JOHN C. KNOX, *A JUDGE COMES OF AGE* (1940). Since then, distinguished judges have supplemented the record regarding the Southern District's place in the history of our federal judiciary. In the early 1980s, Judges Edward Weinfeld, Eugene Nickerson and Roger Miner delivered lectures on the histories of the Southern District and its progeny: the Northern, Eastern and Western Districts of New York. In retelling this history, we have drawn heavily from the histories prepared by Judges Hough, Knox, Weinfeld, Nickerson and Miner, as well as work done by H. Paul Burak some fifty years ago.

² MARK EDWARD LENDER, "THIS HONORABLE COURT:" THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, 1789-2000, 18-22 (Rutgers Press 2006).

³ Section 3 of the Judiciary Act of 1789, 1 Stat. 73, designated New York, New York as the authorized location for sittings of the District of New York. The 1814 statute, 3 Stat. 120, dividing the district designated New York, New York as the authorized location for sittings of the Southern District of New York. Thus, the Southern District of New York is the successor to the District of New York.

⁴ *Hough*, *supra* note 1.

⁵ *Id.*

⁶ *Hough*, *supra* note 1, at 9-10.

⁷ *John Lawrence Dedication*, 23 MIL. L. REV. [v] (1964).

⁸ BARRY WILSON, *BENEDICT ARNOLD: A TRAITOR IN OUR MIDST* 153 (2001).

⁹ *Id.* at 154.

¹⁰ I BENSON JOHN LOSSING, *THE PICTORIAL FIELD-BOOK OF THE REVOLUTION*, 725-27 (1860).

¹¹ W.T. Shields, *The Case of Major Andre – His Trial and Execution*, in REPORT OF THE EIGHTEENTH ANNUAL MEETING OF THE VIRGINIA STATE BAR ASSOCIATION 200, 210-18 (John B. Minor ed. 1906).

¹² T.K. Byron, *John Andre*, GEORGE WASHINGTON'S MOUNT VERNON, <http://www.mountvernon.org/educational-resources/encyclopedia/john-andre> (last visited July 14, 2014).

¹³ Burak, *supra* note 1, at 2.

¹⁴ *Id.*; *United States v. Judge Lawrence*, 3 U.S. (3 Dall.) 42 (1795).

¹⁵ The Judiciary Act of 1789 created three Circuit Courts; Chief Justice Jay presided over the Eastern Circuit, which included New York and the New England states. Judiciary Act of 1789, ch. 20, 1 Stat. 73 (1789). The Judiciary Act of 1801 divided up the United States into six Circuits, with New York part of the Second Circuit. Hough, *supra* note 5, at 7, 13, 15.

¹⁶ Hon. Edward Weinfeld, *The Southern District Court: Its Impact On The Law*, Annual Lecture Sponsored by Federal Bar Council and Second Circuit Historical Committee, at 4 (April 6, 1981).

¹⁷ Judiciary Act of 1789, ch. 20, 1 Stat. 73 (1789); Burak, *supra* note 3, at 9-11; Hough, *supra* note 5, at 7. The Circuit Courts had “original jurisdiction” over all cases where “the amount in controversy exceeded \$500, disputes between citizens of different states and suits where an alien was a party.” Burak, *supra* note 3, at 9-10. The jurisdiction of the Circuit Courts would increase, and then gradually erode until the Circuit Courts were abolished in 1912. *Id.* at 9-11.

¹⁸ Hough, *supra* note 5, at 7, 13. *See also The Supreme Court of the United States and the Federal Judiciary*, FEDERAL JUDICIAL CENTER, http://www.fjc.gov/history/home.nsf/page/courts_supreme.html (last visited July 15, 2014).

¹⁹ Burak, *supra* note 1, at 9-10.

²⁰ Hough, *supra* note 1, at 14.

²¹ Hough, *supra* note 1, at 15-16. When the Judiciary Act of 1801 was passed, President Adams was soon to cede the presidency to Thomas Jefferson. During the interim period, President Adams filled as many of these new appointments as possible, and was said to still be signing commissions at midnight, just as he was to leave office. *See* Ross E. Davies, *A Certain Mongrel Court: Congress’s Past Power and Present Potential to Reinforce the Supreme Court*, 90 MINN. L. REV 678, 688-89 (2006); Hough, *supra* note 5, at 15-16.

²² Hough, *supra* note 1, at 15.

²³ *Id.*

²⁴ *Id.* at 15-16.

²⁵ Judiciary Act of 1802, 2 Stat. 156 (1802).

²⁶ Hough, *supra* note 1, at 17.

²⁷ Judge Laurence resigned in 1796 and was replaced by Judge Robert Troup, who had served as Judge Duane’s clerk. Judge Troup was soon succeeded by Judge Hobart in 1798. *Id.* at 11.

²⁸ *Id.* at 11, 16-17.

²⁹ *Id.* at 11.

³⁰ *Id.* at 11-12.

³¹ *Id.* at 17; Burak, *supra* note 1, at 3.

³² Hough, *supra* note 1, at 17-18.

³³ Hough, *supra* note 1, at 17-18.

³⁴ Joanne B. Freeman, *Dueling as Politics: The Burr-Hamilton Duel*, THE NEW-YORK JOURNAL OF AMERICAN HISTORY 40, 43, 46 (2004), <http://www.alexanderhamiltonexhibition.org/about/Freeman%20-%20Duelisas%20Politics.pdf>.

³⁵ Hough, *supra* note 1, at 18-19; *see* Miner, *supra* note 3, at 12-13.

³⁶ Miner, *supra* note 1, at 12-13.

³⁷ Miner, *supra* note 1, at 12-13.

³⁸ The reporter was titled *Paine’s Reports*. Hough, *supra* note 5, at 20-22.

³⁹ *Id.* at 20-21.

⁴⁰ *Id.* at 21-22.

⁴¹ Hough, *supra* note 1, at 24.

⁴² Weinfeld, *supra* note 1, at 19-20.

⁴³ Weinfeld, *supra* note 1, at 19-20.

⁴⁴ Hough, *supra* note 1, at 24.

⁴⁵ *Id.*

⁴⁶ *Id.* at 24-25; Burak, *supra* note 1, at 5.

⁴⁷ Burak, *supra* note 1, at 5.

⁴⁸ Weinfeld, *supra* note 1, at 27.

⁴⁹ *Id.* at 25-26.

⁵⁰ *Id.*

⁵¹ *Id.* at 25-27.

⁵² Hough, *supra* note 1, at 24.

⁵³ *Id.* at 28.

⁵⁴ *Id.*; Act of April 10, 1869, ch. 22, 16 Stat. 44 (1869).

⁵⁵ *Id.*; Act of April 10, 1869, ch. 22, 16 Stat. 44 (1869).

⁵⁶ *Id.*

⁵⁷ Hough, *supra* note 1, at 28.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ 12 F. Cas. 95 (S.D.N.Y. 1861).

⁶¹ *Id.* at 95-101.

⁶² *Id.* at 102.

⁶³ *Id.*

⁶⁴ *Id.* at 101-03.

⁶⁵ *Id.* at 104.

⁶⁶ 67 U.S. 635 (1863).

⁶⁷ TIMOTHY L. HALL, SUPREME COURT JUSTICES: A BIOGRAPHICAL DICTIONARY 190-91 (2001).

⁶⁸ Hough, *supra* note 1, at 28-29.

⁶⁹ Bankruptcy Act of 1867, 14 Stat. 517 (1867).

⁷⁰ Bankruptcy Act of 1867, 14 Stat. 517 (1867); Charles J. Tabb, *The History of the Bankruptcy Laws in the United States*, 3 AM. BANKR. INST. L. REV. 5, 19-21 (1995).

⁷¹ *Id.*; see also Ronald Cook, *History of the Bankruptcy Court in Erie, Pennsylvania*, 1 (March 2009), <http://www.pawb.uscourts.gov/pdfs/ErieCourtHistory.pdf> (citing Tabb, *supra* note 75, at 19).

⁷² Act of June 7, 1878, ch. 160, 20 Stat. 99 (1878); Tabb, *supra* note 75, at 19-21.

⁷³ Burak, *supra* note 1, at 7.

⁷⁴ Bankruptcy Act of 1898, ch. 541, 30 Stat. 544 (1898).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Burak, *supra* note 1, at 8.

⁷⁸ Hough, *supra* note 1, at 30.

⁷⁹ Miner, *supra* note 1, at 25.

⁸⁰ *Id.* at 13.

⁸¹ Hough, *supra* note 1, at 30.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* at 30-31.

⁸⁶ *Id.* at 31.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Burak, *supra* note 1, at 12.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.* at 12-13.

⁹⁸ *Id.* at 13.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *The Titanic*, 209 F. 501 (S.D.N.Y. 1913).

¹⁰² *Id.* at 501-03.

¹⁰³ *Id.* at 502-03.

¹⁰⁴ *Id.* at 511-12.

¹⁰⁵ *Oceanic Steam Navigation Co. v. Mellor*, 233 U.S. 718 (1914).

¹⁰⁶ *The Lusitania*, 251 F. 715 (S.D.N.Y. 1918).

¹⁰⁷ *Lusitania Torpedoed and Sunk Off Coast of Ireland*, HARRISBURG TELEGRAPH, May 7, 1915, <http://chroniclingamerica.loc.gov/lccn/sn85038411/1915-05-07/ed-1/seq-1/>.

¹⁰⁸ *Lusitania Death Toll 1346; 132 American Passengers Lost; Germany Jubilant*, EVENING LEDGER, May 8, 1915, <http://chroniclingamerica.loc.gov/lccn/sn83045211/1915-05-08/ed-1/>.

¹⁰⁹ *The Lusitania*, 251 F. at 732-36.

¹¹⁰ *Id.* at 736.

¹¹¹ Burak, *supra* note 1 at 15.

¹¹² *Id.*

¹¹³ *Id.* at 13.

¹¹⁴ *Id.* at 15.

¹¹⁵ *Upholds Pint Limit on Liquor for Sick*, N.Y. TIMES, Dec. 20, 1924, http://spiderbites.nytimes.com/pay_1924/articles_1924_12_00001.html.

¹¹⁶ 272 U.S. 581 (1926).

¹¹⁷ *Id.*

¹¹⁸ Ken Gormley, *An Original Model of the Independent Counsel Statute*, 97 MICH. L. REV. 601, 627-28 (1998).

¹¹⁹ *Defense Closes Case in Trial of Daugherty*, THE SPARTANBURG HERALD, Feb. 25, 1927, <http://news.google.com/newspapers?nid=1876&dat=19270225&id=AjgsAAAAIBAJ&sjid=XMoEAAAAIBAJ&pg=5780,5678749>.

¹²⁰ James N. Giglio, *Attorney General Harry M. Daugherty and the United Gas Improvement Company Case, 1914-1924*, 46 PENNSYLVANIA HISTORY 347, 366 (1979).

¹²¹ *Id.*

¹²² Burak, *supra* note 1 at 15.

¹²³ *Id.*

¹²⁴ Irving Younger, *What Happened in Erie*, 56 TEX. L. REV. 1011, 1018 (1977)

¹²⁵ *Id.* at 1012-14.

¹²⁶ *Id.* at 1020-21.

¹²⁷ *Erie R.R Co. v. Tompkins*, 305 U.S. 637 (1938).

¹²⁸ Younger, *supra* note 124, at 1011-12.

¹²⁹ 44 F. Supp. 97 (S.D.N.Y. 1941).

¹³⁰ *Id.*

¹³¹ Peter Lattman, *Law Blog History Lesson: United States v. Alcoa*, WALL STREET JOURNAL: LAW BLOG, May 8, 2007, <http://blogs.wsj.com/law/2007/05/08/law-blog-history-lesson-united-states-v-alcoa/>.

¹³² *Id.*

¹³³ *United States v. Alcoa*, 148 F.2d 416, 428-33 (2d Cir. 1945).

¹³⁴ *Id.* at 431.

¹³⁵ Burak, *supra* note 1, at 16.

¹³⁶ *Id.*

¹³⁷ *Id.* at 17.

¹³⁸ G. Edward White, *Alger Hiss's Campaign for Vindication*, 83 B.U. L. REV. 1, 6, 13 (2003).

¹³⁹ *Id.* at 5.

¹⁴⁰ *Id.* at 8, 19,

¹⁴¹ *Id.*

¹⁴² Brad Snyder, *Taking Great Cases: Lessons from the Rosenberg Case*, 63 VAND. L. REV. 885, 886-87, 896, 915-16 (2010).

¹⁴³ *Id.* at 896.

¹⁴⁴ Burak, *supra* note 1, at 17-18.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 18.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.* at 19.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 19-20.

¹⁵⁶ See note 163, *infra*.

¹⁵⁷ Burak, *supra* note 3, at 20.

¹⁵⁸ *Id.* In 1960, the Southern District had 24 judges, the most of any District Court in the country. In 1960, the second largest court in terms of judges was the District Court for the District of Columbia which had 17 judges, while the Southern District of California was the third largest court with 13 judges. See Judges: United States Courts of Appeal and District Courts, 24 F.R.D. at vii, West Publishing (1960).

¹⁵⁹ Douglas Martin, *Constance Baker Motley, Civil Rights Trailblazer, Dies at 84*, N.Y. TIMES, Sept. 29, 2005, <http://www.nytimes.com/2005/09/29/nyregion/29motley.html?pagewanted=all&r=0>; see *United States District Court for the Southern District of New York*, WIKIPEDIA, http://en.wikipedia.org/wiki/United_States_District_Court_for_the_Southern_District_of_New_York (last visited July 15, 2014).

¹⁶⁰ *Id.*

¹⁶¹ Judge Sotomayor was the youngest-serving judge in the court's history, having ascended to the bench at the age of 38. *Sonia Sotomayor*, WIKIPEDIA, http://en.wikipedia.org/wiki/Sonia_Sotomayor (last visited July 15, 2014).

¹⁶² Craig Wolf, *Lloyd F. MacMahon, a Federal Judge, Dies at 76*, N.Y. TIMES, April 9, 1989, <http://www.nytimes.com/1989/04/09/obituaries/lloyd-f-macmahon-a-federal-judge-dies-at-76.html>.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *United States v. New York Times Co.*, 328 F. Supp. 324 (S.D.N.Y. 1971).

¹⁶⁶ *Id.* at 325.

¹⁶⁷ *Id.* at 331.

¹⁶⁸ See *New York Times Co. v. United States*, 403 U.S. 713 (1971).

¹⁶⁹ In 1970, the Southern District still had the most judges (25) of any District Court in the country. The D.C. district court remained second with 23 judges, while the Central District of California was third with 17 judges. See Judges: United States Courts of Appeal and District Courts, 48 F.R.D. at vii, West Publishing (1970).

¹⁷⁰ Eric Pace, *Lee P. Gagliardi, 80, Nixon Aides' Judge*, N.Y. TIMES, Nov. 5, 1998, <http://www.nytimes.com/1998/11/05/us/lee-p-gagliardi-80-nixon-aides-judge.html>.

¹⁷¹ *Id.*

¹⁷² *Id.*; Lawrence Meyer, *John N. Mitchell, Principal in Watergate, Dies at 75*, WASH. POST, Nov. 10, 1988, <http://www.washingtonpost.com/wp-srv/national/longterm/watergate/stories/mitchobit.htm>.

¹⁷³ 15 U.S.C. § 78(j) (2011).

¹⁷⁴ 450 F. Supp. 95 (S.D.N.Y. 1977).

¹⁷⁵ *United States v. Chiarella*, 588 F.2d 1358, 1362-64 (2d Cir. 1978).

¹⁷⁶ *Chiarella v. United States*, 45 U.S. 222, 230 (1980); see also Frank P. Luberti Jr., *An Outsider Looks at Insider Trading: Chiarella, Dirks, and the Duty to Disclose Material NonPublic Information*, 12 FORDHAM URB. L.J. 777, 796 (1983).

¹⁷⁷ Jonathan R. Macey, *Panel II: Insider Trading: Securities Trading: A Contractual Perspective*, 50 CASE W. RES. L. REV. 269, 286 (1999).

¹⁷⁸ In 1980, the Southern District again had the most judges (34) of any District Court. The D.C. District Court remained second with 22 judges, while the Eastern District of Pennsylvania ranked third in 1970 with 20 judges. See Judges of the Federal Courts, 85 F.R.D. at vii, West Publishing (1980).

¹⁷⁹ Robert McFadden, *Escape by Copter Foiled at U.S. Jail in Manhattan*, N.Y. TIMES, Jan. 26, 1981, <http://www.nytimes.com/1981/01/26/nyregion/escape-by-copter-foiled-at-us-jail-in-manhattan.html>.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ J. Kelly Strader, *White Collar Crime and Punishment: Reflections on Michael, Martha, and Milberg Weiss*, 15 GEO. MASON L. REV. 45, 59-65 (2007); Kurt Eichenwald, *Milken Set to Pay a \$600 Million Fine in Wall St. Fraud*, N.Y. TIMES, April 21, 1990, <http://www.nytimes.com/1990/04/21/business/milken-set-to-pay-a-600-million-fine-in-wall-st-fraud.html>.

¹⁸⁴ *Id.*

¹⁸⁵ *Good Boy, Mr. Milken*, Time, Aug. 17, 1992, <http://content.time.com/time/magazine/article/0,9171,976246,00.html>.

¹⁸⁶ Ronald Sullivan, *Milken's Sentence Reduced by Judge; 7 Months are Left*, N.Y. TIMES, August 6, 1992, <http://www.nytimes.com/1992/08/06/business/milken-s-sentence-reduced-by-judge-7-months-are-left.html>; Kurt Eichenwald, *For Ivan Boesky, Punishment Was Tax-Deductible*, N.Y. TIMES, May 25, 1990, <http://www.nytimes.com/1990/05/25/business/for-ivan-boesky-punishment-was-tax-deductible.html>.

¹⁸⁷ *United States v. Winans*, 612 F. Supp. 827, 829-30 (S.D.N.Y. 1985).

¹⁸⁸ *Id.* at 850.

¹⁸⁹ 484 U.S. 19 (1987).

¹⁹⁰ Arnold H. Lubasch, *17 Found Guilty in 'Pizza' Trial of a Drug Ring*, N.Y. TIMES, March 3, 1987, <http://www.nytimes.com/1987/03/03/nyregion/17-found-guilty-in-pizza-trial-of-a-drug-ring.html>; Arnold H. Lubasch, *Two Sides Rest in 'Pizza' Trial After 15 Months of Evidence*, N.Y. TIMES, Jan. 22, 1987, <http://www.nytimes.com/1987/01/22/nyregion/two-sides-rest-in-pizza-trial-after-15-months-of-evidence.html>.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ Arnold H. Lubasch, *Judge Sentences 8 Mafia Leaders to Prison Terms*, N.Y. TIMES, Jan. 14, 1987, <http://www.nytimes.com/1987/01/14/nyregion/judge-sentences-8-mafia-leaders-to-prison-terms.html>; Arnold H. Lubasch, *U.S. Jury Convicts Eight as Members of Mob Commission*, N.Y. TIMES, Nov. 12, 1986, <http://www.nytimes.com/1986/11/20/nyregion/us-jury-convicts-eight-as-members-of-mob-commission.html>.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ GEORGE C. KOHN, THE NEW ENCYCLOPEDIA OF AMERICAN SCANDAL 147-48 (2001).

¹⁹⁸ In 1990, the Southern District still had the most judges, (33), of any District Court. In 1990, the Central District of California and the Eastern District of Pennsylvania tied for second with 28 judges. *See* Judges of the Federal Courts, 129 F.R.D. at vii, West Publishing (1990).

¹⁹⁹ Peg Tyre, *Proud Terrorist Gets Life for Trade Center Bombing*, CNN U.S., Jan. 8, 1998, <http://www.cnn.com/US/9801/08/yousef.update/>.

²⁰⁰ Fact Sheet, United States Department of Justice: Office of Public Affairs, Prosecuting and Detaining Terror Suspects in the U.S. Criminal Justice System, June 9, 2009, <http://www.justice.gov/opa/pr/2009/June/09-ag-564.html>.

²⁰¹ *Id.*

²⁰² *See The Hon. Charles L. Brieant Jr. Federal Building and Courthouse White Plains, New York*, http://www.nysd.uscourts.gov/site_whiteplains.php. In 2008, the White Plains Federal Court was renamed the Hon. Charles L. Brieant, Jr. United States Courthouse.

²⁰³ In the year 2000, the Southern District still had the largest bench of all the District Courts with 44 judges. The Central District of California had 34 judges, while the Eastern District of Pennsylvania had 30 judges. *See* Judges of the United States District Courts, 188 F.R.D. at vii, West Publishing (2000).

²⁰⁴ *Stewart Convicted on all Charges*, CNN MONEY, Mar. 10, 2004, http://money.cnn.com/2004/03/05/news/companies/martha_verdict/.

²⁰⁵ *Away with You*, ECONOMIST, Oct. 13, 2011, <http://www.economist.com/blogs/schumpeter/2011/10/raj-rajaratnam%E2%80%99s-insider-trading>.

²⁰⁶ David S. Hilzenrath, *Raj Rajaratnam, Hedge Fund Billionaire, Gets 11-Year Sentence for Insider Trading*, WASH. POST, Oct. 13, 2011, http://www.washingtonpost.com/business/economy/hedge-fund-billionaire-gets-11-year-sentence-in-fraud-case/2011/10/13/gIQAa0PZhL_story.html.

²⁰⁷ *Id.*

²⁰⁸ 540 U.S. 398 (2004).

²⁰⁹ *Law Offices of Curtis V. Trinko, LLP v. Bell Atlantic Corp.*, 123 F. Supp. 2d 738, 739 (S.D.N.Y. 2000).

²¹⁰ *Id.* at 741-42.

²¹¹ *Verizon Commc'ns Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398, 407-08 (2004) (citing *United States v. Colgate & Co.*, 250 U.S. 300, 307 (1919)).

²¹² *See, e.g., Robert A. Skitol, Three Years After Verizon v. Trinko: Broad Dissatisfaction with the Whole Thrust of Refusal to Deal Law*, ANTITRUST SOURCE, April 2007.

-
- ²¹³ Simon Romero & Riva D. Atlas, *Worldcom's Collapse: The Overview*, N.Y. TIMES, July 22, 2002, <http://www.nytimes.com/2002/07/22/us/worldcom-s-collapse-the-overview-worldcom-files-for-bankruptcy-largest-us-case.html>.
- ²¹⁴ Sam Mamudi, *Lehman Folds with Record \$613 Billion Debt*, WALL ST. J. MARKETWATCH, Sept. 15, 2008, <http://www.marketwatch.com/story/lehman-folds-with-record-613-billion-debt>.
- ²¹⁵ Chris Isidore, *GM Bankruptcy: End of An Era*, CNN MONEY, June 2, 2009, http://money.cnn.com/2009/06/01/news/companies/gm_bankruptcy/.
- ²¹⁶ *Id.*; Michael J. De La Merced, *Court Ruling Clears Path for G.M. to Restructure*, N.Y. TIMES, July 6, 2009, <http://www.nytimes.com/2009/07/06/business/06auto.html>.
- ²¹⁷ Michael J. De La Merced, *A Judge Who Reshaped the Corporate Landscape*, N.Y. TIMES DEALBOOK, Dec. 29, 2011, <http://dealbook.nytimes.com/2011/12/29/a-judge-who-reshaped-the-corporate-landscape/>.
- ²¹⁸ *60 Minutes: The Madoff Scam: Meet The Liquidator*, CBS NEWS, Sept. 25, 2009, <http://www.cbsnews.com/news/the-madoff-scam-meet-the-liquidator-25-09-2009/2/>.
- ²¹⁹ Press Release, United States Attorney, Southern District of New York, Bernard L. Madoff Pleads Guilty to Eleven-Count Criminal Information and is Remanded into Custody (Mar. 12, 2009), <http://www.justice.gov/usao/nys/pressreleases/March09/madoffbernardpleapr.pdf>.
- ²²⁰ Beth Healy & Casey Ross, *Madoff Gets 150 Years in Prison*, BOSTON GLOBE, June 30, 2009, http://www.boston.com/business/articles/2009/06/30/citing_8216extraordinary_evil8217_judge_gives_madoff_150_years_in_prison/.
- ²²¹ *Id.*
- ²²² 313 F. Supp. 2d 174 (S.D.N.Y. 2003).
- ²²³ 355 U.S. 41, 45-46 (1957).
- ²²⁴ *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 557 (2007).
- ²²⁵ 556 U.S. 662 (2009).
- ²²⁶ *Iqbal* originated in the Eastern District of New York, which came into existence when the Southern District was split in 1865. See *supra* text accompanying note 52.
- ²²⁷ Deborah Feyerick, *Times Square Plotter Sentenced to Life in Prison*, CNN, Oct. 5, 2010, <http://www.cnn.com/2010/CRIME/10/05/new.york.terror.plot/>.
- ²²⁸ Chris Dolmetsch and Bob Van Voris, *Somali Pirate Muse Gets 34-Year Prison Sentence for Indian Ocean Hijacking*, BLOOMBERG, Feb. 16, 2011, <http://www.bloomberg.com/news/2011-02-16/somali-pirate-muse-gets-34-year-prison-sentence-for-indian-ocean-hijacking.html>.
- ²²⁹ Benjamin Weiser, *Jurors Convict Abu Ghaith, Bin Laden Son-in-Law, in Terror Case*, N.Y. TIMES, Mar. 26, 2014, <http://www.nytimes.com/2014/03/27/nyregion/bin-ladens-son-in-law-is-convicted-in-terror-trial.html>.
- ²³⁰ Press Release, Office of the District Court Executive, Southern District of New York, Ten S.D.N.Y. Judges to Participate in Patent Pilot Program Starting November 26 (Nov. 3, 2011), http://www.nysd.uscourts.gov/file/news/patent_pilot_program_press_release.
- ²³¹ *Id.*
- ²³² *Id.*
- ²³³ See *Plan for Certain § 1983 Cases Against the City of New York* (Nov. 15, 2013), <http://www.nysd.uscourts.gov/rules/1983%20Revised%20Plan%20and%20Exhibits.11.22.2013.pdf> and *In re: Pilot Project Regarding Case Management Techniques for Complex Civil Cases in the Southern District of New York*, Standing Order M10-468 (Nov. 1, 2011), http://nysd.uscourts.gov/rules/complex_civil_rules_pilot.pdf.
- ²³⁴ See *U.S. District Courts—Civil Cases Commenced, Terminated, and Pending During the 12-Month Periods Ending March 31, 2012 and 2013* and *U.S. District Courts—Criminal Cases Commenced, Terminated, and Pending (Including Transfers) During the 12-Month Periods Ending March 31, 2012 and 2013*, www.uscourts.gov.