



# **HISTORY OF THE NEW HAMPSHIRE FEDERAL COURTS**

**Prepared by the Clerk's Office of the United States District Court  
for the District of New Hampshire - 1991**

# HISTORY OF THE NEW HAMPSHIRE FEDERAL COURTS

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## **PREFACE & ACKNOWLEDGMENT**

by James R. Starr, Clerk of Court from November 1984 – January 2014

One of the casualties in modern jurisprudence is a sense of history, a feeling of movement and direction. This book grew from the concern that many of the citizens of this State had no access to information as to how New Hampshire's federal court system evolved throughout its two-hundred year history. This book is not intended to be a comprehensive legal discussion of the jurisdiction and procedures of our federal courts, but rather a historical overview of the people, events, places that have shaped the federal court system in New Hampshire.

As the Table of Contents indicates, I have attempted to document those areas in the court's development that would be most interesting to the citizenry-at-large. As this is the first attempt to consolidate these 200 years of achievement, there will no doubt be some deficiencies, which future editions must rectify. Accordingly, I sincerely invite and request reader comment on every aspect of this book.

While I bear sole responsibility for the content of this book, my role in its publication was more of a facilitator than an author. This work was too widely shared to permit specific acknowledgment of all who helped, but special mention must be made of the contributions of five student assistants who rendered indispensable aid. Their dedication, skill, and effort contributed significantly to the preparation of this book. Brad Wilder, who was a senior at Dartmouth College during the summer of 1988 when this project began, was the sole author during the formative period of the manuscript. It was through Brad's efforts in drafting a temporary edition that I realized the potential of such endeavor.

During the summer of 1989, two students, Jason Sapsin, then a sophomore at Williams College, and Rahul P. Ranadive, a senior at Dartmouth College, shared the research and writing duties. Jason helped me structure this book from a seemingly impassable maze of research material and, more importantly, gave the manuscript a singular voice. Jason returned the summer of 1990 after spending the year studying at Exeter College, Oxford, England to put some finishing touches on the manuscript. In the Summer of 1991, another two students contributed to the creation of the finished product. Scott Good, a first year student at Nova School of Law was a researcher. Siobhan Keenan, a senior at Dartmouth College, also performed some research and completed the final editing.

These five individuals deserve high praise for their dedication in combing through hundreds of court records and documents culling out the relevant historical and cultural material and weaving it around the judicial personnel of this District. Thanks go to my entire staff for their comments and observations on the manuscript and special thanks as well to Robert Axenfeld, a student of Franklin Pierce Law School, for his help.

My editors, Kathie Northrup and Cathy Green have been a source of enormous help, especially during the final stages of this book, and I am most grateful for their interest and constructive advice.

The following organizations provided us with access to collections of documents, materials and facilities with unfailing patience:

National Archives - Boston Branch  
James K. Owens, Director

Stan Stachefski  
National Archives - Washington, DC

I also wish to thank all those who kindly provided photographs and drawings during the course of our research. I regret that only a small number of them can be reproduced here. Those that are featured in this book are used with appropriate permission from the Historical Society of the United States District Court for the Eastern District of Pennsylvania.

To all these helpful people, I take this opportunity to express my gratitude.

James R. Starr  
Clerk

Concord, New Hampshire  
September 1991

## INTRODUCTION

To most students of American history or politics the phrase "checks and balances" is an old and familiar one that describes how the Executive, Legislative, and Judicial branches of the Federal government operate both with and against one another. What is perhaps less familiar is how each branch of the federal government is organized, and in particular, how the Judicial branch is organized.

The Constitution of the United States, in establishing a judicial structure, states that "the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as Congress may from time to time ordain and establish." (Article III, Sect. 1) The United States today is of a size and strength the original framers of the Constitution could hardly have imagined--yet those sparse lines provide authority for the existence and operation of hundreds of federal courts and almost one thousand federal judges throughout the United States and its territories. The Federal Judiciary, headed by the Supreme Court, is a gigantic network that has been created under the authority of the Constitution to serve the entire nation.

This network did not spring to life straight from the pages of the Constitution. Like so many governmental practices and institutions in place today, the federal judiciary evolved through the continuing development of government which our Constitution allows.

The dominant force in the original formation of the Federal Judiciary, and, indeed, in the birth and ratification of the Constitution itself, was the battle between the Federalists and the Anti-Federalists. Central to this battle has always been the question of power, its uses and abuses. The Federalists believed a powerful central government was the best way to rule efficiently. The Anti-Federalists believed that autonomous states would better answer the needs of the people. They felt that a powerful central government would interfere with the states' abilities to govern themselves. Both sides had strong arguments in their favor. These arguments were at the forefront of the minds of men like Benjamin Franklin, John Adams, George Washington, Thomas Jefferson, and Alexander Hamilton; as theoreticians, they had matured politically in a climate which demanded answers to these questions of government. As revolutionaries, their genius lay in attempting to implement those answers.

The desire for a limitation of power might be seen as being at the heart of the "federal issue". The states, having just recently prosecuted a war for what they felt were their just rights

and freedoms, proved unwilling to subordinate themselves to a new central authority -- even one of their own devising. This was the major stumbling block to the Constitution as it was being drafted and, later, as it was being ratified in the individual states. The issue of centralized power surfaced repeatedly as the federal government established itself and tested the limits of its power; seeking to exercise governmental functions and rights that it believed it had been granted, either expressly or implicitly, by the Constitution.

The federal battle eventually moved into Congress itself. All bills and resolutions affecting the nation and the several states came under intense scrutiny, often by men who had been elected on the basis of where they stood concerning the federal issue. When the Judiciary Act of 1789 was passed, it was a significant step in the development of a centralized government, one carefully watched by the Anti-Federalists.

While the Judiciary Article (Article III of the Constitution) mandated the creation of a Supreme Court, it left to Congress the decision of whether there should be any inferior federal courts. Since there was much opposition to their creation, the decision to permit, but not require, such courts was one of the important compromises of the 1787 Constitutional Convention which drafted the first Constitution establishing the new federal government.

When a quorum of twelve of the twenty members of the first Senate convened on April 6, 1789, they promptly appointed a committee of ten senators to draft a judiciary bill. Neither the committee nor, indeed, the whole Senate, could be described as a harmonious group. The committee included five who had served in the Convention of 1787: Oliver Ellsworth of Connecticut (later Chief Justice), William Patterson of New Jersey, Caleb Strong of Massachusetts, William Few of Georgia, and Paine Wingate of New Hampshire. The committee also included Richard Henry Lee of Virginia, a vociferous Anti-Federalist, and William Maclay of Pennsylvania, who opposed the Bill in the committee and the Senate. The Bill was introduced on June 12, 1789 as Senate Bill No.1. Oliver Ellsworth was a principal draftsman of the Bill and its most persuasive advocate. The Bill underwent extended debate in the Senate. As a result some changes and compromises had to be made before it could pass.

The main subject of debate was whether there should be any district courts. Anti-Federalists sought additional amendments to eliminate lower federal courts on the ground that review of the state court decisions by the Supreme Court on *writ of error*<sup>1</sup> was sufficient

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<sup>1</sup> A writ of error is a written order from an appellate court, such as the Supreme Court, telling the court of record, for

assurance that the Constitution and Acts of Congress would be enforced. They then attempted to eliminate diversity of citizenship jurisdiction<sup>2</sup> and equity jurisdiction<sup>3</sup>, but were unsuccessful.

While the Congress was considering the Judiciary Act, it also had to consider the numerous amendments to the Constitution proposed by state conventions. A number of these proposals would have amended Article III in ways inconsistent with the Judiciary Act. The first ten Amendments approved, (the Bill of Rights), were consistent with the Judiciary Act. But early in September of 1789 the Senate rejected the proposed constitutional amendments eliminating district courts and diversity of citizenship jurisdiction as these would have conflicted with the Act. On September 24, 1789, President Washington signed the Judiciary Act to establish the Judicial Courts of the United States (First Congress, Session 1, Chapter 20, 1789). The decision of Congress to exercise its constitutional option to establish a system of federal trial courts has been hailed as its transcendent achievement.

The original thirteen judicial districts were not identical to the thirteen original states. North Carolina and Rhode Island had not yet joined the union by ratifying the Constitution, therefore they were not given federal courts. Maine, then a part of Massachusetts, and Kentucky, then a part of Virginia, were constituted as districts separate from their states. A lasting precedent was that no district overlapped a state boundary.

The Act created three tiers of courts: the Supreme Court, the Circuit Courts and the District Courts--the latter two being trial courts. Except for the District Courts of Kentucky and Maine, which were given the same original jurisdiction as circuit courts, the jurisdiction of the district courts was strictly limited by the Act of 1789. Although the Circuit Courts were the important trial courts, the Act made no provision for the office of circuit judge. The bench of a Circuit Court was composed of one or two Supreme Court justices sitting with the district judge of the district where the court was held. The Act not only provided for courts and judges, but also

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instance the state court, to remit the record of an action before them, on which a final judgment has been entered. This allows the appellate court to examine in the record any errors alleged to have been committed, so that the judgment may be reversed, corrected or affirmed.

Note: Letters refer to footnotes that appear at the bottom of the page. Numbers refer to endnotes that appear as the end of the document.

<sup>2</sup> This extends the jurisdiction of the court to trying cases between citizens of different states or a citizen and an alien, provided jurisdictional amounts are also met.

<sup>3</sup> This gives the court the right to try equity cases. In equity, justice is administered according to fairness, in contrast to the strictly formulated rules of common law.

for the personnel necessary to support them: namely a Clerk of Court, a United States Attorney, and a United States Marshal.

The Judiciary Act of 1789, like the Judiciary Article of the Constitution, and like the Constitution itself, was a compromise. In obtaining a federal judiciary of trial courts, the Federalists had to accept drastic limitations on those courts' jurisdiction to cases arising under the Constitution or the Acts of Congress. But the Act was a great legislative achievement for the Congress of a new nation. There had been no prior model to guide its creators, for no other country had ever established a dual system of federal courts and state courts. It was left to future leaders to deal with any shortcomings and to adapt the system to meet changing needs.

## THE UNITED STATES CIRCUIT COURT

The circuit courts<sup>4</sup> were designed to occupy the second tier of the three-tier system of judicial responsibility as established by the Judiciary Act of 1789. At the top was, and is, the United States Supreme Court. It is the last resort for all who enter the legal system. The Supreme Court exercised an almost exclusively appellate jurisdiction, the vast majority of the cases it heard had already been decided by lower courts. The circuit courts exercised a limited appellate jurisdiction by rehearing cases that came up from the district courts and a limited original jurisdiction by hearing cases that were just entering the legal system. The district courts, in turn, had only original jurisdiction and no appellate jurisdiction. As stated by Erwin Surrency in the Federal Rules Decisions, the jurisdiction of the circuit courts "extended to all matters triable under the federal statutes and not reserved exclusively to the district court. In addition, the circuit court had exclusive original jurisdiction in diversity of citizenship cases where the amount exceeded \$500."<sup>i</sup>

The Judiciary Act of 1789 designed the circuit courts to resemble their British counterparts. The Supreme Court Justices would ride the circuits, traveling throughout the country in a circuit and holding court twice yearly in each district. The federal judge for that district would join the Justices on the bench to hear trials and appeals.

Congress did not consider exactly what it was asking of its Supreme Court Justices. At the time there was no rail system, and roads were neither extensive nor well maintained. Health care was primitive and not readily available and a person could die from the flu. Disease was common, and travel frequently gave people new ailments or made them suffer greatly from existing ones. The rigors of circuit riding were too much for many of the Justices. Justice Blair had what he described as, "a rattling distracting noise in my head," and it led him to cut short his circuit riding and resign the bench.<sup>ii</sup> Justice Rutledge had a crippling case of gout that caused him to miss several meetings of the Supreme Court. Chief Justice John Jay, in his later years, suffered from rheumatism, which kept him at home and away from the circuit bench.<sup>iii</sup> In addition to the risks of disease and poor health, these traveling Justices faced the risks of accident and physical injury. Justice Iredell had his leg run over by a run-away horse and carriage and Justice Cushing's

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<sup>4</sup>Note: There were a number of nominal and jurisdictional changes at this level of the federal system which have led to a great deal of confusion. Refer to the time line at the end of this section for a more graphic explanation.

vehicle overturned. The "Philadelphia Aurora" reported on February 5, 1800 that Justice Chase was taken almost lifeless from the Sesquehanna River, having fallen in while crossing it.<sup>iv</sup> All of these accidents happened to these Justices while performing their circuit duties. Despite the hardships there were a few positive aspects of circuit riding as the justices were able to renew acquaintances and visit with friends. At least one justice, Chief Justice Jay, made it a policy to never reside in the homes of his friends while on circuit. He did not wish to make one acquaintance feel snubbed by staying with another, so he always stayed at inns. As he visited one inn or pub after another, he would write reviews of the food and hospitality in his diary, giving each place a rating of "good, bad or fair." One biographer described his diary as "replete with entries regarding the state of the inns and food offered along various routes in New England - a primitive Guide Michelin of the region."<sup>v</sup>

The rigors of circuit riding were, however, sufficient to cause several of Washington's Supreme Court nominees to decline their nominations. A few, such as Justice Blair, reluctantly accepted a position at the bench only because President Washington assured them that the situation would soon change. This assurance is demonstrated in such letters as the one Washington sent to Justice Harrison on November 25, 1789. Harrison had just resigned his appointment to the Supreme Court.

I find that one of the reasons, which induced you to decline the appointment, rests on an idea that the Judicial Act will remain unaltered. But in respect to that circumstance, I may suggest to you, that such a change in the system is contemplated, and deemed expedient by many in, as well as out of Congress, as would permit you to pay as much attention to your private affairs as your present station does.<sup>vi</sup>

It was commonly believed that the first Judicial Act was to play a part similar to the first Continental Congress, i.e., to establish a temporary system until an effective, permanent one could be devised.

In an effort to achieve a more effective system, President Washington sent a letter on April 3, 1790 to all the Supreme Court Justices, requesting their suggestions. He wrote, I have always been persuaded that the stability and success of the national Government, and consequently the happiness of the People of the United States, would depend in a considerable degree on the Interpretation and

Execution of its Laws. In my opinion, therefore, it is important that the Judiciary system should not only be independent in its operations, but as perfect as possible in its formation.

As you are about to commence your first circuit, and many things may occur in such an unexplored field, which it would be useful should be known; I think it proper to acquaint you, that it will be agreeable to me to receive such Information and Remarks on this Subject, as you shall from time to time judge expedient to communicate.<sup>vii</sup>

Chief Justice Jay prepared a reply to this request and sent a draft copy to the other Justices. In this letter, Jay challenged the constitutionality of circuit riding. He stated that an act of legislation mandating circuit riding by the Justices was "a departure from the Constitution and an exercise of powers which constitutionally and exclusively belong to the President and the Senate."<sup>viii</sup> Jay softened the letter with a fair amount of diplomacy. He said that there were defects in the Act "relative to Expediency which merited attention by Congress, but as these were doubtless among the objects of the reference by that body to the Attorney General, we think it most proper to forbear making any remarks on the subject at present."<sup>ix</sup> This letter was never sent to President Washington. The Justices allowed a sense of political decorum get in the way of their changing a system they knew to be ineffective. As historian Julius Goebel Jr. states it, "the Court, whether from commitment to principle or from a sense of propriety, had thus far steered clear of anything resembling political self help."<sup>x</sup> It took several rounds of circuit riding before the Supreme Court spoke up as a body against this ineffectual system.

The Judiciary Act divided the thirteen states into three circuits, with two justices of the Supreme Court allotted to ride each circuit.<sup>xi</sup> The Act left the division of circuit duties to the discretion of the Supreme Court Justices. Before ever going on a circuit, Chief Justice Jay, and Justices Cushing, Wilson and Blair decided that each Justice would ride the circuit in which he lived. This decision was a sore spot for Justice Iredell as he was not a party to making it, and he frequently called for that policy to be changed. When the Justices refused to change the system, he called for a change to be made by Congress. His sentiments are expressed the following letter to Thomas Johnson.

March 15, 1792. Philadelphia, Pennsylvania

I apprehend, from the manner in which you write, that Mr. Cushing omitted writing to you as he intended before he left town, Which I am sorry for as the notice of their expectations was by that means so much shorter. The meeting of the Judges on the subject of the Circuits was at my request. I remember troubling you at Richmond with a statement of the manner in which three Judges out of five (without consulting the sixth, Mr. Rutledge, who was on the spot, & tho' confined with the gout perfectly capable of conversing about business) determined that there should be no rotation of Circuits - in consequence of which the C.J.[Chief Justice John Jay] & Mr. Cushing considered themselves Proprietor of the Eastern Circuit, Mr Wilson kept possession of the Middle Circuit, and Mr. Blair (who voted with me for a rotation) became entitled on the same principle to the Middle Circuit also, and Mr. Rutledge and myself were doomed to the Southern Circuit only. The Circuits were fixed in this manner at first by the former four Judges only (when I knew nothing either of my appointment, which was about that time made out, nor even of my nomination, and Mr. R. was absent) for this reason, as assigned by the C.J. that the Judges could best determine in the Circuits wherein they lived on the propriety of the admission of Lawyers- In consequence of this arbitrary decision (for I can call it nothing else) I have gone the Southern Circuit three times out of four & upon the last Circuit alone rode 1800 miles, at least 1000 miles more than the utmost of the others....Nothing I could say had the least effect on Mr. Cushing & Mr. Wilson, they adhered to their old principle. Mr Blair, as I understood, voted with me for a rotation. I concluded with telling them, that I would not agree to go unless compelled by a vote. Such a vote has not been given, for we were divided, at least I understood so...I have applied to several Members of Congress that the law may be amended so as to compel a rotation, and have reason to hope it will be done. Nevertheless, as I see no prospect of any of the other Judges going except you, Sir, I do expect and intend to go myself rather than the Circuit should be unattended but it is distressing to me in the greatest degree.<sup>xii</sup>

Justice Iredell was willing to make any sacrifice necessary in order to eliminate circuit riding. He suggested to Chief Justice Jay that the Justices take a \$500 pay cut, approximately the same amount they spent on travel expenses. However he met some resistance in this endeavor. As he writes in the same letter to Mr. Johnson, "I am very glad you approve of our offer but I apprehend unless it is unanimous it cannot be proposed, and I fear as Mr. Jay expects to be Governor of New York (I am told with high probability) [Jay in fact lost the gubernatorial race] that he may be doubtful of the propriety of relinquishing a part of the Salary. I confess I was astonished at Mr. Cushing's hesitating and can only account for it by his finding travelling in the midst of his New England friends much cheaper than any of the rest of us do I believe."<sup>xiii</sup>

Attorney General Edmund Randolph shared the sentiments of the Supreme Court Justices. He suggested to Congress that the government appoint new members to the judiciary as permanent circuit judges and allow the Supreme Court to stay at home and conduct business.<sup>xiv</sup> There were two strong objections to this in Congress. First, in the early years there simply was not that much business for the Supreme Court to conduct. The second and more important objection was that, by keeping the justices coming into the local area to participate, and by allowing the district judge to establish the circuit court's workload, the courts tended to have a local rather than national focus.<sup>xv</sup> This cannot be overemphasized in view of the Anti-Federalist concerns over potential interference in local jurisdictions.

The Justices finally wrote a letter to President Washington to be read before Congress regarding the Circuit Court system. As Julius Goebel says,

necessity moved them to represent the rigors of holding twenty-seven courts per annum, in the most severe seasons of the year, the time spent on the road, the dangers to health, and the improbability of enduring such severe duties for any length of time. The plea then arrived at the solid policy argument, 'that the distinction made between the Supreme Court and its judges, and appointing the same men finally to correct in one capacity the errors which they themselves may have committed in another, is a distinction unfriendly to impartial justice, and to that confidence in the Supreme Court which is so essential to the public interest should be reposed in it.'<sup>xvi</sup>

This plea, coupled with complaints regarding circuit-riding duties from Attorney General Edmund Randolph and President Washington, prompted the passage of a bill in 1792 that

eliminated the requirement that two Supreme Court justices sit on a circuit court, decreasing the number to one Supreme Court justice, plus the district judge.<sup>xvii</sup> The Circuit Court Act also required that the Supreme Court Justices rotate their circuit-riding duties. The Act stated, "no justice, without consent, could be required to take the same circuit more than once until all the other justices had ridden that circuit."<sup>xviii</sup> This change marked an end to the tremendous amount of infighting that had been taking place among the Supreme Court Justices regarding who would ride what circuit.

In 1801 an extraordinary set of circumstances allowed a long-awaited, drastic revision of the circuit courts. John Adams, then President, was a strong Federalist and was backed by a mostly Federalist congress. This strong Federalist representation in government, coupled with Adams' impending departure from office, created an environment ripe for sweeping federal judicial reform. The result was the Judiciary Act of 1801. Under this Act circuit riding by the Supreme Court justices was abolished. This Act authorized, and Adams appointed, sixteen new judges to ride the circuits and hear trials. Three of those judges were appointed to ride the first circuit, which included New Hampshire. The Act also extended the jurisdiction of the lower federal courts.<sup>xix</sup> Furthermore, the number of circuits was increased to six, and the number of Supreme Court justices was reduced to five.<sup>xx</sup>

This Judiciary Act has been named the "Midnight Judges Act" and the new appointees the "midnight judges." This popularized name is the result of a largely apocryphal story that Adams stayed up past midnight on the last day of his term appointing deserving Federalists to the newly created posts. The story itself, while not entirely accurate, is a good indication of how the Act was perceived. It was viewed by some "as the Federalists' last-ditch effort to prolong their domination of government," and by others "as an extension of federal jurisdiction to suits that previously had been tried only in state courts."<sup>xxi</sup> It is true that the Federalists were interested in getting federal judgeships and in protecting and strengthening the federal judiciary, but the "Midnight Judges Act" was the consequence of a long series of debates about the need for reform, not a last ditch effort to force Federalist's theories onto the public.

The Judiciary Act of 1801 was repealed during the Jefferson administration at the turn of the Federalist tide and replaced by the Circuit Court Act of 1802. The Circuit Court Act kept the number of circuits at the new figure of six and restored circuit riding by the Supreme Court justices. However, in an interesting provision, the presence of a Supreme Court justice was not

necessary for circuit court to take place. Trials could now be held with only a district judge presiding. In practice, the same judge could hear a case and then its appeal.<sup>xxii</sup>

For almost the next seventy years nothing was done to relieve the Supreme Court's burden or to increase the efficiency of the circuit courts; additional circuits and even Supreme Court justices were simply added as necessary. The pro-state (Anti-Federalist) and pro-nationalist (Federalist) forces had reached a stalemate that was impossible to break and proved that the federal issue was as strong as it had ever been. They continually jockeyed back and forth on whether or not to lessen Supreme Court power and shift many conflicts to lower federal courts.<sup>xxiii</sup> The circumstances that had allowed Adams to forge a political coalition and thereby attempt circuit reform were not repeated.

It is widely believed that the practice of riding circuit gradually dropped off among the justices. Erwin Surrency says that, "In all probability, the justices did not cease performing this function at any one time but the function gradually fell into disuse. . . . It is known that prior to 1860 at least one justice did not bother to go on circuit."<sup>xxiv</sup> For justices who did travel, the increasing size of the nation meant ever greater distances, and "most of the justices averaged a total of 2,000 miles during the year."<sup>xxv</sup>

New Hampshire Circuit Court records show that thirteen Supreme Court Justices sat on the bench from 1790 until 1886. Among those was John Jay, the first Chief Justice. Court was generally held twice a year, alternating between Exeter and Portsmouth, following the pattern of the District Court. After that period, the pattern of the justices' attendance settles down into long periods dominated by a single justice (Justice Joseph Story served for 32 years). The last recorded appearance of a Supreme Court Justice sitting on a New Hampshire Circuit Court bench is Horace Gray in May 8, 1886.

The first step in a three-step process of reform was taken in 1869. Congress authorized the appointment of nine new circuit judges, while reducing circuit duty of the Supreme Court justices to one term every two years. Six years later it broadened the jurisdiction of the circuit courts, once more in the hope of relieving the Supreme Court's burden of work.<sup>xxvi</sup>

The second and most decisive step, which ultimately was to doom the circuit courts, came in 1891. Congress passed the Evarts Act of 1891 to, as Judge John Parker states, "relieve the Supreme Court, which had been hopelessly in arrears with its work. A backlog of approximately twelve hundred cases had accumulated."<sup>xxvii</sup> This act established the Circuit Courts of Appeal as

an intermediary tier between the circuit courts and the Supreme Court. There were now four tiers of federal courts: the district courts, the circuit courts, the circuit courts of appeal, and the Supreme Court. The circuit courts of appeal had a jurisdiction which included the appeals from the district and circuit courts. Sitting on the bench for this new court would be the existing circuit court judges, that circuit's Supreme Court justice and a district court judge, should the other judges choose to include said district judge. The circuit courts jurisdiction to hear appeals from the district court was abolished by this act.<sup>xxviii</sup>

Because only two judges were necessary in order to hold court, Supreme Court justices were not required to attend the circuit courts of appeal. This freed them from much of their backlog.<sup>xxix</sup> The final step came with the adoption of the Judicial Code of 1911 abolishing the circuit courts and conferring their remaining jurisdiction upon the district courts.

The work of the circuit courts lives on today, but is divided into two court systems; the district courts and the Courts of Appeal, which underwent a name change from Circuit Courts of Appeal in 1948.<sup>xxx</sup>

Time Line for the Circuit Court and Related Courts

Judiciary Act of 1789  
Circuit Court created.

March 1793  
Only 1 Justice  
has to sit.

Midnight Judges 1801  
16 Circuit judges  
appointed and 6  
circuits created.  
Supreme Court  
participation  
ended.

Act of 1802  
Midnight judges  
removed.

1807  
1 new circuit  
& justices

1837  
9 circuits  
& justices

1863  
California and  
Oregon in new circuit  
service reduced

1866  
New Circuit  
abolished

Act of 1869  
9 Circuit judges  
added, Justices'

Act of 1891  
Circuit Courts of  
Appeal created  
Courts of Appeal

Act of 1911  
Circuit Courts  
abolished

Act of 1948  
Circuit Courts of  
Appeal becomes

## JUDGES OF THE CIRCUIT COURT

<u>Judges</u>	<u>Service</u>
1. Lowell, John	Feb 20, 1801 - Jul 1, 1802
2. Bourne, Benjamin	Feb 20, 1801 - Jul 1, 1802
3. Smith, Jeremiah	Feb 20, 1801 - Jul 1, 1802
4. Shepley, George Foster	Dec 22, 1869 - Jul 20, 1878
5. Lowell, John	Dec 18, 1878 - May 1, 1884
6. Lowell, Francis C.	Feb 23, 1905 - Mar 6, 1911

John Lowell<sup>xxxi</sup>  
(1743 - 1802)

John Lowell was born in Newburyport, Massachusetts, on June 17, 1743. A graduate of Harvard College (1760), Judge Lowell went on to study law and gained admission to the bar in 1762. He practiced law in Newburyport until 1776, when he received his commission as an officer in the militia. Lowell was an active participant in the Revolutionary War and distinguished himself in the service of his state and his country.

After moving to Boston in 1777, Lowell was elected to the Massachusetts House of Representatives in 1778. He served two terms and left the House in 1782. He was a delegate to the state constitutional convention in 1780 and then a member of the state senate in 1784 and 1785. Lowell acted as a commissioner in the dispute over the New York/Massachusetts boundary line in 1884.

John Lowell first served on the Massachusetts Court of Appeals from 1784 to 1789 and then as a Judge of the United States District Court of Massachusetts from 1789 to 1801. He was appointed as a "midnight judge" by President John Adams in 1801. Judge Lowell died in Roxbury, Massachusetts on May 6, 1802.

Benjamin Bourne<sup>xxxii</sup>  
(1755 - 1808)

Benjamin Bourne was born in Bristol, Rhode Island, on September 9, 1755. Like his colleague John Lowell, Bourne graduated from Harvard in 1775. He went on to study law and was admitted to the bar to begin practice in Providence. He was quartermaster of the 2nd Rhode Island Regiment in 1776. Bourne became a member of the Rhode Island General Assembly for the years 1789 and 1790, and served in the United States Congress following his state's ratification of the Constitution. He was a member of the first five Congresses, being elected to his last two as a member of the Federalist party.

Bourne was appointed Judge of the United States District Court for Rhode Island in 1801. Judge Bourne was later appointed by President Adams as a "midnight judge" and became a Judge of the United States Circuit Court for the First Circuit. He died in his home town of Bristol on September 17, 1808 and is interred in Juniper Hill Cemetery.

Jeremiah Smith<sup>xxxiii</sup>  
(1759 - 1842)

The first United States Circuit Court judge from New Hampshire was a native of Peterborough, born on November 29, 1759. Smith attended Harvard in 1777. He then served in the Revolutionary War. He fought under the famous General John Stark at the Battle of Bennington.

Smith graduated from Queen's College, New Jersey, in 1780. Following his study of law, he was admitted to the bar in 1786 and commenced practice in Peterborough. Smith was elected to draft our nation's founding document at the Constitutional Convention as a New Hampshire representative.

Elected to the United States Congress in 1791, Smith served in the Second, Third, Fourth, and Fifth Congresses (in the last two as a Federalist). As a member of the Fifth Congress, he was a committee chairman (Committee on Revisal and Unfinished Business). Following his resignation in July of 1797, he moved to Exeter, New Hampshire.

Jeremiah Smith was the United States District Attorney for New Hampshire for the years 1797 to 1800. He was Judge of the Probate Court for Rockingham County from 1800 to 1802. Judge Smith served as the third of President Adams' "midnight judges". He then sat as Chief

Justice of the Superior Court of New Hampshire from 1802 to 1809, was Governor from 1809 to 1810, and then became Chief Justice of the New Hampshire Supreme Court from 1813 to 1816. Judge Smith retired from practice in 1820. He was a bank president and the treasurer for Phillips Exeter Academy in his retirement years. Jeremiah Smith died in Dover on September 21, 1842, and is interred in the Winter Street (or Old) Cemetery in Exeter, New Hampshire.

George Foster Shepley<sup>xxxiv</sup>  
(1819 - 1878)

George Shepley was born in Saco, Maine on January 1, 1819. He entered Dartmouth College at the age of 14 and graduated in 1837. Following his graduation, he read law with his father and then studied at Harvard. Shepley began the practice of law in Bangor, Maine in 1839, entering into a partnership. In 1844 he moved to Portland, Maine and had two successive law partners.

Shepley was appointed the United States District Attorney for Maine on November 8, 1848, but his appointment was lost the following year in the political upheaval of the time. He was reappointed in 1853 and served until June of 1861.

A Colonel in the 12th Regiment of Maine Volunteers, Shepley became the military commandant of the captured city of New Orleans and then of the state of Louisiana. In 1865, as a Brigadier-General, he was the military governor of Richmond.

General Shepley resigned his commission in July of 1865, and resumed the practice of law in Portland. On December 22, 1869, he became a United States Circuit Judge. He died of Asian cholera on July 20, 1878.

John Lowell<sup>xxxv</sup>  
(1824 - 1897)

Born in Boston on October 18, 1824, John Lowell went from private schools to Harvard, graduating in 1843. He graduated from Harvard Law School in 1845 and, after an apprenticeship, was admitted to the Boston bar in 1846.

After spending a year abroad, Lowell began practice with his brother-in-law. He practiced alone after 1857. He became an expert in insolvency law. In 1857, Lowell and Horace Gray were published in the Harvard Law Review (and later in pamphlets) in an article against the Dred Scott decision. John Lowell was appointed by President Lincoln as a United States District Judge for Massachusetts. In 1878 he was appointed circuit judge. He has been said to have had a keen awareness and was a leader in the implementation of practical justice. Citing few precedents in his decisions, Judge Lowell was felt by some to be a wayward judge. He resigned in 1884, drafted a new Bankruptcy Act (not adopted), was an overseer of Harvard, and was on the Massachusetts General Hospital board. He was noted for his humor and sociability. Judge Lowell died May 14, 1897.

Francis Cabot Lowell<sup>xxxvi</sup>  
(1855 - 1911)

Francis C. Lowell was born in Boston, Massachusetts on January 7, 1855. After being educated in private schools, he graduated from Harvard in 1876 and then spent a year travelling in Europe. After two years at Harvard Law he entered into a legal apprenticeship and later began practice with a cousin in Boston. He served as private secretary to Justice Horace Gray for one year.

After serving in city and state government as an elected representative, Francis Lowell was appointed to the United States District Court in 1898. Seven years later he was appointed to the circuit. A very small proportion of the decisions Judge Lowell made were overturned. This is a testament to how just he was and how diligently he prepared his opinions. His work was widely published in academic, political, and legal journals. Judge Lowell was also the author of an anonymous romance novel and a work on Joan of Arc.

Williams College bestowed an honorary LL.D. upon him in 1910. A physically as well as intellectually imposing man, Judge Lowell was fond of the outdoor life.

## CASES FROM THE UNITED STATES CIRCUIT COURT FOR NEW HAMPSHIRE

### The Midnight Judges

Entering the courtroom in Portsmouth for the first time in 1801, the three judges must have been acutely aware of the precariousness of their position. Being called the "midnight judges" did little to add to the aura of respectability surrounding their judicial robes. The three judges, John Lowell, Benjamin Bourne, and Jeremiah Smith, were President Adams' appointees for the Circuit Court of the United States for the First Circuit (which included New Hampshire). The entire nation questioned whether these men deserved to hold their positions. Many thought the judges were merely the last vestiges of a defunct Federalist administration. The Clerk of the Court was Jon Steele, who was also Clerk for the District Court. On their first day, these midnight judges, unlike the judges of all other courts, had no crier. The three judges were faced with the indignity of bellowing the names of the parties from the bench if they didn't find a crier for themselves. The judges solicited Simeon Ladd to perform the task. Ladd was later officially appointed Court Crier.

The judges sat for two days, starting on April 23, 1801, and finishing on April 25. During those two days they allowed continuances in seven cases. The large number of continuances may have been due to the tenuousness of their position. The judicial revisions enacted by Adams did not have adequate support in the new administration. Judges Lowell, Bourne and Smith probably realized they would not hold their positions for long. One case was voluntarily dismissed by mutual agreement and eight judgments were entered; seven of them for debt cases. Each debt case was found for the United States of America, the plaintiff. John Samuel Sherburne asked leave to defend the only decided non-debt case (a testator's dispute) and agreed that judgment be rendered in favor of the plaintiff.

The most noteworthy ruling that occurred during the 1801 session of the court of the First Circuit is the following.

It having been represented to this Court that the District Judge of this District is unable to perform the duties of his office, and satisfactory evidence of the inability of said District Judge being shown to the Circuit Court it is thereupon directed by the Court, in pursuance of the powers vested in them by the 25th section of the Act of Congress entitled an act to provide for the more convenient organization of the Courts of the United States, that Jeremiah Smith esquire one of the judges of this

Court perform the duties of the said District Judge during the period the inability of the said District Judge shall continue.

This ruling temporarily replaced John Pickering as an acting district judge, placing a circuit judge upon the district court's bench, the first such action by a judicial court.

In the second session of the circuit court with the midnight judges, business was much the same as in the first session. There was at least one jury trial for debt in which the jury found for the plaintiff. There was also an insurance case involving a ship. The court's first case, *Samuel Holland vs. William Greenough*, was dismissed, "the parties failing to appear."

The third and last session of the court with the midnight judges begins and ends on the same page of the Final Judgement book (court records), surrounded by a black ink border. It records how court opened again in Portsmouth on April 23, 1802 and adjourned the following day. The three judges maintained a perfect attendance record despite the adverse political climate. The next entry in the Final Judgment book begins with Justice Cushing of the Supreme Court sitting on the bench.

#### A Case from Justice Story and Judge Sherburne

There are many cases for the period in and around the War of 1812 that concern the embargo legislation created by Congress to prevent the flow of trade to England. Smuggling was widespread, and the contraband consisted of rum, sugar, various dry goods, even nails. The following is from a typical case regarding violations of embargo legislations. The trial was heard by Justice Joseph Story and District Judge John Samuel Sherburne sitting at Exeter on November 2, 1809.

*The United States Plats vs. John Mann* upon an Information in the following words  
viz -- United States of America. -- District of New Hampshire Circuit Court

John Mann of Oxford in said District Gentleman after the passing of the Act of the Congress of the said United States entitled an Act laying an Embargo on all Ships and Vessels in the Ports and Harbours of the United States to wit, on the Sixteenth day of February now last past at Oxford aforesaid, did with force of arms, put place and load into and upon certain carriages or vehicles without wheels viz certain Sleighs, the following goods and merchandize viz . . ., without the said United States and the Territories thereof and from said Oxford, and from said District and from said United States and the Territories of the same United States to a foreign place Country or dominion to wit to the Provence of Lower Canada within the

Colonies or Dominions of George the third King of the United Kingdom of Great Britain and Ireland, with Intent to evade the said Act entitled an Act laying an Embargo. . . .Whereupon the said Attorney of the said United States for the District aforesaid, for the said United States, prayeth the consideration of the Court here in the premises, and that due process of Law may be awarded against him the said John Mann in their behalf to make him answer to the said United States touching and concerning the premises aforesaid.--

Dan Humphrey Attorney of the United States for the District of New Hampshire.

### Proceedings from the October Term of 1858

The circuit court was empowered to hear cases of admiralty and maritime jurisdiction and to hear appeals from the district court. The following case from the October term of 1858, heard by Judge Harvey, is a good example of both.

it is considered and decreed by the court that the said Brig, her tackle, apparel, and furniture, and the said Simon Pendar claimant, thereof be condemned in damages in the sum of fifty four dollars, interest thereon from the day of the filing of said libel, being fifty six dollars and seventy five cents in the whole, and the costs of this suit taxed at ninety three dollars forty one cents, and that execution issue therefor.

From which decree the said Pendar claims an appeal at the Circuit Court of the United States next to be holden at Exeter within and for said District on the eighth day of October, A.D. 1857.

This cause was entered in this Circuit Court at the October term A.D. 1857 and cont'd from term to term till this present term, when the said Simon Pendar being three times solemnly called comes not but fails to prosecute his appeal. Whereupon it is considered by this Court that the decree of the District Court be affirmed, and that the said Brig called the Good Hope, her tackle, apparel, and furniture, and the said Simon Pendar claimant thereof be condemned in damages in accordance with the decree of said District Court in the sum of fifty six dollars and seventy five cents with interest thereon from the date of the decree of said District Court to this time, being in all the sum of sixty one dollars and thirty nine cents, and costs of said District Court taxed at ninety three dollars and forty one cents, and of this Court taxed at forty two dollars and sixty cents, being one hundred and thirty six dollars and one cent in all, and that execution issue therefor.

### A Case of Justice Nathan Clifford and Judge Harvey

In New Hampshire today it is perhaps difficult to place the existence of slavery within our consciousness. Our state motto of "Live Free or Die" might seem very far away in both time and

place from the issue of slavery. It may be too easy to forget that the Civil War had to be fought before the nation recognized that such a motto could be universally applied. The following case of Justice Clifford and District Judge Harvey shows just how directly slavery could touch people in New Hampshire during the Civil War period. It comes from the May term of 1861 and is *The United States vs. Thomas Nelson et al.*, appealed from the district court by the defendants. Their motion is "to set aside said verdict and for a new trial, because the said verdict is against the evidence offered at trial." The case was begun in Exeter on October 8, 1860 and continued in Portsmouth on November 20.

[The] Grand Jurors of the United States of America for the District aforesaid upon their oaths present that Thomas Nelson of Portsmouth aforesaid in the District aforesaid seaman, called Thomas Nelson... and Thomas Savage . . . and Samuel Sleeper...and John McCafferty . . . heretofore, to wit, on the eighth day of August in the year of our Lord one thousand eight hundred and sixty with force of arms, on the high seas, out of the jurisdiction of any particular state of the United States of America, on waters within the admiralty and maritime jurisdiction of the said United States of America, and within the jurisdiction of this court, they the said Thomas Nelson and Thomas Savage and Samuel Sleeper, and John McCafferty then and there being of the crew and ships company of a certain vessel being a ship called the Erie owned wholly or in part by a citizen or citizens of the United States of America aforesaid, whose name or names is and are to the said jurors unknown, did piratically and feloniously forcibly confine and detain certain negroes to wit, nine hundred negroes whose names to the said jurors are also unknown in and on board of the said vessel being a ship called the Erie as aforesaid with the intent of them the said Thomas Nelson and Thomas Savage and Samuel Sleeper and John McCafferty to make slaves of the aforesaid certain negroes, to wit, nine hundred negroes, they the said negroes not having been held to service by the law of either one of the states or territories of the said United States of America, against the form of the statutes of the said United States, in such cases made and provided and against the peace and dignity of the said United States . . .<sup>xxxvii</sup>

There were two charges upon which the defendants were brought up separately. The first charge was for serving voluntarily on a slave ship -- the defendants were convicted. The second charge was for being engaged in the slave trade for which some of the text of the indictment is shown above -- the defendants were acquitted by jury. The case file for the *United States vs. Nelson, et al.*, contains only a copy of each of the Attorney General's indictments. They differ only in the attempt to pinpoint the defendants' activities as being off the coast of Africa.

The defendants were fined \$1 each and sentenced to three and one-half months in jail after conviction under the first charge.

## Proceedings from the New Era

The final glimpses of the court are captured after the Judiciary Act of 1869, which introduced the first circuit judges since the "midnight judges." Justice George Shepley first appears in the docket books of the United States Circuit Court of New Hampshire in the May term of 1870. Justice Clifford appears for the next two terms, and then Shepley returns for the October term of 1871 under the title of "Circuit Judge."

The following two brief items are taken from the clerk's docket book. The docket books are used to briefly describe the court's business, its judgments and orders, and attendance at court. These items illustrate not only the burgeoning of Internal Revenue Service cases, but also the changing vocabulary and shorthand of the court. The entries come from the beginning of the twentieth century but are strikingly similar to something one might find in today's records.

August 26, 1902 - *United States vs. Frank Rivers*:

Indictment found. Vio sect. 5478. Deft. arraigned, plea guilty. Deft. sentenced to pay a fine of \$100 and to imprisonment at hard labor in the States Prison at Concord for two years and to stand committed. Warrant to commit issued. Warrant returned served.

December 12, 1905 - *United States vs. Samuel B. Strickland*:

Indictment returned. Vio. Int. Rev. Laws sect. 3242, 3239 R.S. Deft. arraigned, reading waived, plea nolo [nolo contendere]. 1st and 2nd counts not prossed. Deft. ordered to pay a fine of \$20.00 and costs taxed at \$20.00. Fine suspended during good behavior. Costs paid and respondent discharged. Aldrich J.

## THE UNITED STATES DISTRICT COURT

The District Courts were designed to occupy the bottom, or third tier, of the three-tier system of judicial responsibility established by the Judiciary Act of 1789. However, unlike the Circuit Courts and even the Supreme Court, the District Courts have engendered far less controversy and undergone far less change in the intervening years between 1789 and the present.

The district courts have always been a site of original federal jurisdiction. It will be remembered that one of the most distinctive characteristics of the circuit courts, and the prime characteristic of the Supreme Court, involved appellate jurisdiction -- the ability to re-try or review cases already adjudicated within the federal system. The power to hear cases for the first time is called original jurisdiction.

Changes in the district court system have most commonly occurred in the apportionment of judges and the designation and separation of new districts within the United States and its territories. The only other real area of change has involved adjustments to the district courts' jurisdiction, and although this is a continuing process, it can be said to have culminated in the reform brought about by the Judicial Code of 1911.

Judge John Parker describes the role of the District Courts as follows:

The principle jurisdiction of the District Courts was in admiralty and after the passage of the Bankruptcy Act of 1898 in bankruptcy matters. They had jurisdiction, too, in minor criminal cases and cases involving penalties and forfeitures. All of the civil and criminal jurisdiction exercised by the Circuit and District Courts prior to the Judicial Code of 1911 was vested by that code in the District Courts, which have since that time been the chief federal trial courts sitting with and without a jury and trying cases in law, in equity and in admiralty.<sup>xxxviii</sup>

Since the Evarts act of 1891, Districts judges have been sitting on the benches of the Circuit Courts and the Circuit Courts of Appeals, as well as the District Court. The Judicial Code of 1911 freed them from the responsibility of sitting on the Circuit Court and gave them more time to devote to the District Court and its increased workload. Today the district courts exercise general original jurisdiction

One of the problems encountered by the district court system has been the increasing size of the nation and the population. Districts once designated as encompassing whole states have

often become too large and too populated to administer effectively. One such example is the district of Texas. Prior to 1857, the entire state of Texas was served by one federal district court located in Galveston.<sup>xxxix</sup> But because of its size, Congress was forced to divide Texas into four districts for the purposes of the federal court system and to allot multiple locations for the convening of federal courts.<sup>xi</sup> Currently Congress is more willing to appoint additional federal judges within the same district than to multiply the districts themselves. Another solution has been to subdivide the districts into divisions to allow for the easier selection of court sites and juries.<sup>xli</sup>

The appointment of federal judges has traditionally been a matter of political patronage. The President generally appoints to the bench members from his own party. The appointment and selection of federal judges in the early years of the federal courts can be characterized as the sole responsibility of the President of the United States.

Today, however, the selection of potential judges is frequently left up to the United States Senators. The President passes on the names of recommended candidates to the Senate in accordance with 28 U.S.C. ' 133<sup>5</sup>, which states: "The President shall appoint, by and with the advice and consent of the Senate, district judges for the several judicial districts."

The jurisdiction of a United States District Court today includes controversies in federal questions, unfair competition and state claims, diversity cases where the amount in dispute exceeds \$50,000, admiralty cases, criminal cases falling under federal laws, the appeals of bankruptcy issues, patent cases, copyright cases, trademark cases, civil rights cases, cases in which the United States is plaintiff, cases falling under the Federal Tort Claims Act, cases involving the postal service, cases where consuls<sup>6</sup> and vice-consuls are defendants, proceedings by the United States involving condemnation, cases involving an Act of Congress related to commerce or antitrust regulations, naturalization, suits by seamen under the Jones Act, cases involving suits under the Securities Exchange Act, suits related to the Public Utility Holding Company Act, Social Security review cases, as well as other areas of jurisdiction not previously mentioned.<sup>xlii</sup>

In New Hampshire, district court sessions were held alternately in Exeter and Portsmouth four times a year. In 1881 the circuit and district courts were transferred from Exeter to Concord.

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<sup>5</sup> U.S.C. is an abbreviation of the United States Code.

<sup>6</sup> Consul: An officer appointed by a nation to watch over the mercantile and tourist interests of that nation and of its subjects in foreign countries.

Judge John Sullivan was commissioned on September 16, 1789, as the first judge for the Federal District Court of New Hampshire. On November 10, 1789, he appointed Jonathan Steele as the first Clerk of the court.

The first actual day of court was held in Portsmouth on March 16, 1790. The Marshal provided a jury (12 people) for the court and prepared for trial by appointing a foreman. Ironically, no one appeared or even filed a claim in court. It seems that the court automatically summoned a jury before there was even a case scheduled to be heard. The court opened its doors and waited for litigants with a full jury in the same fashion as a store opens for business and waits for customers. The clerk wrote: "there appearing to be no business before the Court it was adjourned without day."

The second and third sessions of court, July 13, 1790 and December 21, 1790, were just as uneventful as the first. No cases were filed or tried. Again the clerk wrote: "The court met, and the grand Jurors were called, sworn and charged; but no business appearing before the Court, it was adjourned without day."

It was not until June 7, 1791, two years after the court was created, that a case was heard. It was an admiralty case dealing with coffee that was apparently brought into the port of Portsmouth without being accounted for properly. The coffee was distributed and auctioned to the public.

The coffee case was Judge Sullivan's first case; it would also be his last. From September 1791 until April 1795 the District Court of New Hampshire heard no cases. For that period the clerk writes: "Judge of said court sick and unable to attend at the place aforesaid, no court was or could be held."

In April 1795 Judge John Pickering took over the Federal District Court of New Hampshire. Before his appointment to the federal district court, John Pickering had served as Chief Justice to the New Hampshire Superior Court for three years.<sup>xliii</sup> In 1793 or 1794 he became sick with a nervous disorder which caused him to neglect his duties in the state Superior Court. The state tried to dismiss him as a judge, but political infighting caused him to stay. Looking for a compromise to a difficult problem, the state persuaded President Washington to appoint Pickering judge for the Federal District of New Hampshire.<sup>xliv</sup> Pickering assumed this position left vacant by Judge Sullivan's death. This appeared to be an equitable compromise.

Pickering successfully carried out his duties as district judge, initially. It was not until 1800 that serious problems started to develop. Judge Pickering stopped appearing for court. The clerk's records say: "This court was adjourned, in absence of Judge." As a temporary emergency measure, Jeremiah Smith, the circuit court judge, sat as district court judge for the September 1801 session of the court. When Judge Pickering returned to the court in March 1802 he adjourned the court until the next day but evidently failed to appear.

The antics of Judge Pickering which attracted the most attention occurred during the case of the *United States v. Eliza*. In this case, the ship *Eliza* had been seized in violation of revenue laws. The owner of the ship and his lawyer were Federalists, the arresting officer and the district attorney were Republicans.<sup>xlv</sup> The case immediately took on a political complexion and brought about a political battle between the Republican administration of Thomas Jefferson and the Federalists. Pickering's judgement is described by R. Ellis,

Pickering found for the claimant (*Eliza*), and when the district attorney pointed out that the judge had not yet heard the witnesses for the government side, Pickering is said to have jeered, 'You may bring forty thousand & they will not alter the decree.'<sup>xlvi</sup>

Judge Pickering was allegedly intoxicated during the trial and yelled and raved profanities throughout the course of it.<sup>xlvii</sup>

Pickering's impeachment became an issue between the Federalists and Republicans. The only provision for a judge's removal is "impeachment for, and Conviction of, Treason, Bribery or other high Crimes and Misdemeanors." (U.S. Const. Art. II, ' 4) Although Pickering was allegedly insane, the Constitution did not provide for removal of a federal judge whose disabilities rendered him unfit to perform his duties.<sup>xlviii</sup> The only solution was for Pickering to resign, but he refused.

A political battle ensued in Washington between the Federalists and Jefferson's Republicans. The Federalists believed the administration was plotting to overturn the Constitution. They believed the Republicans had already started by repealing the Judiciary Act of 1801. Were the Republicans to force a judge out of office, it would weaken the judiciary's independence and upset the carefully planned balance of power between Congress and Court.<sup>xlix</sup> In addition, if Pickering was impeached, his successor in all likelihood would be District Attorney

John Samuel Sherburne, a Republican; thus further weakening the Federalist's presence in the government.

On February 4, 1803 Jefferson sent evidence to the House of Representatives, calling for the impeachment of Pickering.<sup>1</sup> A month later the Republican House voted to impeach Pickering. The trial before the Senate was not scheduled until the following session.

The trial took place during the first two weeks of March 1804. It was common knowledge that Pickering was insane, but the Republican Senate tried to argue that either Pickering was still aware of his actions or that a man mentally incompetent was guilty of "high crimes and misdemeanors."<sup>li</sup> "The dilemma is," observed John Quincy Adams, "between the determination to remove the man on impeachment for high crimes and misdemeanors, though he be insane . . . ."<sup>liii</sup>

A short debate ensued on wording for the final vote asking if John Pickering was guilty. The Senate adopted a less specific form: "Is John Pickering, District Judge of the District of New Hampshire, guilty as charged in the article of impeachment exhibited against him by the House of Representatives?"<sup>liiii</sup>

Of the 34 senators, 26 voted. Nineteen Republicans pronounced Pickering guilty on every charge; seven Federalists voted for his acquittal. A bare minimum of two-thirds of the voting senators found Pickering guilty. The Federalists suspected the most insidious intentions behind the impeachment of Pickering. They were aroused even more by Pickering's impeachment than they had been by the repeal of the Judiciary Act of 1801.<sup>liv</sup>

The court did not meet from June 15, 1802, through Pickering's impeachment in March 1804. When the trial was over, John Samuel Sherburne, the Republican district attorney, was appointed to replace Pickering. He heard his first case on June 19, 1804.

In 1826 Judge Sherburne became incapacitated by illness. Upon an "order in the nature of Certiorari", Justice Joseph Story came to the court and ordered all cases in the jurisdiction of the district court to be moved indefinitely to the Circuit Court of New Hampshire.

The district court did not meet from 1826 through 1831. The first entry in the court's records in 1830 is written by Andrew Jackson, President of the United States. "I Andrew Jackson President of the United States nominated Matthew Harvey as the New Judge of the United States for the District of New Hampshire. Signed by Andrew Jackson & M. Van Buren, Secretary of State, December 16, 1830"<sup>lv</sup> The court had made it through a shaky start.

## JUDGES OF THE DISTRICT COURT

John Sullivan  
(1740 - 1795)  
Term: 1789 to 1795



John Sullivan was born the third son of John and Margery (Brown) Sullivan in Somersworth, New Hampshire, on February 18, 1740. His father was an Irish immigrant who had established his home in Berwick, Me. seventeen years before. John Sullivan was described by his contemporaries as brave, hot headed, oversensitive, generous to a fault, usually out of money, and a born political organizer. His Irish antipathy for all things English spurred him to the Patriot cause during the American Revolution.<sup>lvi</sup>

In 1758 Sullivan was employed by Samuel Livermore of Portsmouth, a lawyer, to take care of the horses and perform general labor. One evening while Mr. Livermore was not at home, a defendant came to the house and, figuring that anyone from the office would be sufficient, he asked the young Mr. Sullivan to take his defense; Sullivan agreed. When Mr. Livermore returned, he found no one to care for his horse. Upon learning where his employee had gone, Mr. Livermore went to the Deacon Penhallow House and slipped into an adjoining room to hear Sullivan plead his case. Sullivan was successful and the client was acquitted. The next morning Mr. Livermore told John the kitchen was no place for him, that he should pursue his law studies and that he would assist him in whatever he needed. Sullivan became Livermore's student and later established his own legal practice in Durham.

In 1774 and 1775 and again in 1780-1781, Sullivan was a delegate to the first Continental Congress. From 1774-1779 he was highly active in the revolutionary military. By the time of his resignation in 1779, Sullivan had been promoted to a Major-General. In 1782 he was the state's Attorney General.<sup>lvii</sup>

In 1785 Sullivan began campaigning for the position of President of the State of New Hampshire. His opponents attempted to discredit his campaign with the accusation that General Sullivan was not a native of New Hampshire. They based this claim on the fact that Sullivan's parents were settled in Maine, and Sullivan spent much of his childhood there. Sullivan claimed that he had been born in New Hampshire during a brief visit to the state by his parents. This issue

was an important one at the time. The political scene was turbulent; government authority was being established and tested at both the state and federal levels. The citizens of New Hampshire firmly believed that the only person they could trust to truly act in their interests had to be one of their own, a man naturally born to New Hampshire, and not an alien. Sullivan's claim was believed. He was President of New Hampshire in 1786-1787 and again in 1789.<sup>lviii</sup>

As a lawyer, John Sullivan had a fiery temper and an iron will. The daring and persistence that characterized his military career carried over into his legal career. When Sullivan was beaten in a lower court, he rarely abandoned his cause until all appeals were exhausted.<sup>lix</sup>

Appointed by President Washington to be Judge of the District Court for the District of New Hampshire in 1789, Judge Sullivan brought high esteem to the reputation of his court. Because the court was so new, much of the business that passed through the court was routine and the majority of that work was handled by the clerk. Judge Sullivan had a short-lived career on the bench and he was unable to gain the distinction as a jurist that he had as an officer and politician. This was a result of Sullivan's poor health. He was greatly weakened in body and mind, so much so that he rarely attended sessions of the court, and another judge had to be called in to perform judicial business. Arthur Fuller says that, "[Sullivan's] retention in this office when incapacitated to perform its functions was the result of the high esteem in which Washington himself and other influential persons held him on account of his eminent services as a warrior and statesman...his failure was not attributable to any lack of natural qualifications, but only to failing health."<sup>lx</sup>

General John Sullivan lacked military education or experience, yet he served his country valiantly in time of war. Sullivan did not possess inherited wealth and influence, and he lacked higher education. His father, a schoolmaster, instilled in him a drive to learn that served him throughout his legal career. Through his own hard work, Sullivan became a respected member of the bar, acquired wealth and a considerable amount of property in Durham, New Hampshire, and gained the respect apparent in his numerous civil offices.

John Pickering<sup>lxi</sup>  
(1737 - 1805)  
Term: 1795 to 1804



Pickering was readied for college under the guidance of Rev. Joseph Adams of Newington. Pickering began the study of divinity after his graduation but eventually changed to the study of law. He originally established a practice in Greenland but moved to Portsmouth shortly thereafter.

Pickering was a very religious man and strongly believed he should do all he could to help his fellow man. He refused a position as a clergyman in Boston because he believed he could do more good as a lawyer. He lived up to this by giving legal counsel to the poor with no expectation of compensation. Historian Charles Bell says that, "Though one of the most eminent practitioners of his time, he realized from his business little more than he required for the support of his family."<sup>lxii</sup> For Pickering, the legal profession was far more than a respectable calling, it was a means for him to insure that all men received equal treatment under the law, regardless of wealth and position. He carried this belief into his political career.

Pickering served as a representative in the Assembly of the Province of New Hampshire in 1774. While in office, Pickering opposed the measures that Great Britain imposed on the American colonies but shied away from a complete break with Britain. John Pickering was elected a delegate to the 1787 Constitutional Convention in Philadelphia but declined the position as he disliked long journeys. Instead he was extensively involved in the formation and revision of the New Hampshire State Constitution and called this Constitution his "favorite child, of his own begetting."<sup>lxiii</sup> He also served in the New Hampshire convention to ratify the United States Constitution in 1788 and was instrumental in its adoption by the state. Charles Bell says that, "It is believed that, had he employed his abilities and eloquence as zealously against the [Constitution] as he actually did in its favor, the convention would have rejected it."<sup>lxiv</sup> Pickering was a member of the New Hampshire House and Senate as well as being a member of the Executive Council. In January of 1790, he became President of New Hampshire when the incumbent (John Landon) was chosen to be a United States Senator. Pickering's time as Governor was brief because in August he was appointed Chief Justice of the Superior Court. He held that

office until February 1795, when he was appointed Judge of the United States District Court for the District of New Hampshire.

Pickering, perhaps, is New Hampshire's most notorious District Court Judge. After performing his duties diligently for a number of years, he began to show signs of mental illness. Pickering's lifetime struggle with hypochondria was beginning to influence his efficiency and effectiveness on the bench. As his illness worsened, Judge Pickering began to display signs of intoxication while on the bench and regularly used profanity. Ray Brighton of the Associated Press wrote a brief history of Judge Pickering's problems which appeared in The Concord Monitor ("A Tale of a Drunken, Deranged Judge"):

John Pickering of New Hampshire served nine years on the federal bench before being removed in 1804. Pickering had not been convicted of any crime; his impeachment stemmed from accusations of smuggling, political favoritism, greed, drunkenness and insanity.

Pickering's problems came to a head in 1802 when a ship skippered by Capt. William Ladd sailed into Portsmouth. Ladd was a scion of an influential family and a Federalist.

Ladd hoped to avoid paying additional duty by declaring his cargo of cable used. Tax Collector Joseph Whipple insisted the cable was new and brought action against Ladd in U.S. District Court.

When arguments began on Nov. 11, 1802, Pickering declared, as he approved a motion to adjourn, 'I shall be sober tomorrow. I am now damned drunk.'

The next day, Pickering infuriated Whipple by ordering the cable returned to Ladd. Whipple, who believed Pickering's Federalist leanings made him sympathetic to the Ladds, asked government officials - Jeffersonian Democrat-Republicans - to help remove the judge from the bench.

At the request of President Thomas Jefferson, the House impeached Pickering in February 1803. The Senate waited another year before holding hearings.

Pickering, because he was afraid of crossing water, sent his son to the hearing to act on his behalf. The younger Pickering conceded his father was mentally unstable.

The bulk of the evidence came from Jeffersonians who described Pickering as drunk or deranged when he presided over the Ladd hearings.

The dreary trial before Vice President Aaron Burr and the Senate ended with a guilty verdict and a 19-9 impeachment vote along party lines.<sup>lxv</sup>

Judge Pickering was honored with an LL.D. by Dartmouth College.

John Samuel Sherburne<sup>lxvi</sup>  
(1757 - 1830)  
Term: 1804 to 1830



John Samuel Sherburne was born into one of the oldest families of Portsmouth. Involved unsuccessfully in the mercantile business, he served in 1778 as a volunteer to General William Whipple in the "crusade" against Rhode Island. While breakfasting in his tent, Sherburne was victim to a chance cannon shot which cost him his leg. Following the war, Mr. Sherburne began a legal practice in Portsmouth after receiving the necessary preparation from John Pickering. According to Charles Bell, "As a practicing lawyer, [Sherburne] was lacking in self-control. Above mediocrity as an advocate, he could so ill-bear contradiction or interruption that his anger on such occasions often did mischief to his clients' interests."<sup>lxvii</sup>

John Sherburne was elected to the state legislature in 1790 and served as Speaker for some of his two- to three-year tenure. He was twice elected to the House of Representatives serving for four years. After spending one more year in the state legislature, Sherburne ended his political career.

In 1802 he was appointed District Attorney of the United States and held that position until he was appointed to replace Judge John Pickering as Judge of the District Court in 1804. Judge Sherburne retained that position until the end of his life.

There is some scandal attached to Judge Sherburne. Apparently he was instrumental in the impeachment of Judge John Pickering and his involvement was considered by many to be a black mark upon his character. Sherburne testified strongly against Pickering, but "when summoned for further cross examination, he absented himself so that he could not be found."<sup>lxviii</sup> Accepting the position of the man he helped to remove from office was thought to have been a move of questionable taste. The years before Sherburne's death were spent in a state of mental deterioration and senility. According to Charles Bell, "there was not wanting those who looked upon this as a judgment upon him for his course against his predecessor in office."<sup>lxix</sup>

Matthew Harvey<sup>lxx</sup>  
(1781 - 1866)  
Term: 1830 to 1866



Judge Harvey offered a brief biography of himself in the following words:

My father was a farmer. I was fitted for college in the family of Rev. Samuel Wood, D.D., of Boscawen [and graduated from Dartmouth College in 1806]; read law in the office of John Harris, Hopkinton, and was admitted in Hillsborough County [in 1809], and commenced practice in Hopkinton, where I continued till 1830. Meantime, in 1814, I was chosen representative to the state legislature seven years successively, the last three of which I was Speaker. During the last year I was elected to Congress, and served four years. When I returned home I had been elected to the state senate, and so continued three years, being president all that time; then chosen [executive] councilor two years, and then in 1830 elected governor of the State. During that year I received the appointment of Judge of the United States District Court (by General Jackson), and have held that office to the present time [1864],--a period of fifty years of office-holding, not omitting a day. Though often a candidate, I was never defeated.<sup>lxxi</sup>

Upon his election to the Governorship, Matthew Harvey was the first to emphasize that imprisonment for debt was cruel and illogical and should be eliminated. He also recommended that inmates at the state prison should be given a means of immediate support so that they should have every chance of rehabilitation.

Dartmouth College bestowed an honorary LL.D. upon Judge Harvey in 1855. Judge Harvey is best remembered for his conscientious and benevolent attitude and his fidelity to duty.

Daniel Clark<sup>lxxii</sup>  
(1809 - 1891)  
Term: 1866 to 1891



Daniel Clark is the son of a farmer blacksmith. Clark attended Hampton Academy and from there moved on to Dartmouth College. Clark defrayed the cost of his education by working as a teacher during his vacations. He graduated from Dartmouth in 1834. After graduation Clark studied law in the office of George Sullivan and that of James Bell, both in Exeter. Upon completion of his legal studies, Clark began practice in Epping. He later moved to Manchester in the hope that it would develop

into a commercial center. Daniel Clark was very involved in local government, holding such positions as city solicitor, school board member, city library trustee, and representative in the state legislature for five years. He was even chief engineer of the fire department.

Clark ran for the United States Senate in 1855 hoping to follow his previous political successes. He was defeated by his former employer, James Bell, but when Senator Bell died in office, Clark was chosen to serve the remainder of that term. He was also reelected for the next term as senator.

In 1866, Clark was appointed to the United States District Court. Although by law, Judge Clark might have relinquished his position at seventy years of age and still retained his salary, he insisted that he was going to "earn his money" and remained Judge of the District Court until his death at age eighty-two.

A man of extreme intelligence and devotion to duty, Judge Clark practiced law for twenty years, spent ten years in the United States Senate, and served on the bench for twenty-four. Clark was so highly regarded by his peers that he was often called upon to serve on the tribunals in other states in his circuit. He was universally regarded as faithful, honest, and trustworthy. Dartmouth College inscribed his name on the list of Doctors of Laws honored in 1866.

At the time of his death, Judge Clark was a trustee of the Manchester City Library and the Manchester Savings Bank, as well as the oldest director of the Amoskeag Corporation.

Edgar Aldrich<sup>lxxiii</sup>  
(1848 - 1921)  
Term: 1891 to 1921



Edgar Aldrich remained at home working on the farm and attending the district school until he was fourteen years old at which point he entered an academy at Colebrook. After graduating in 1866, he began the study of law in the office of Ira A. Ramsey. He graduated from the University of Michigan Law School in 1868 with an LL.B.

Aldrich returned to New Hampshire after his graduation. He was admitted to the state Bar by the Honorable Jeremiah Smith, even though he was only twenty years old, short of the age limit by one year. From the start he was a very successful and sought-after lawyer; he had thirteen cases pending at the State Supreme Court by the time he was twenty-eight. He had been practicing law for over twenty years when he was appointed Judge of the District

Court by President Harrison in 1891. In that year, Dartmouth College bestowed an honorary Master of Arts degree upon Judge Aldrich and in 1901 an LL.D. In 1907 the University of Michigan bestowed upon him an LL.D.

Judge Aldrich died in a accident on July 8, 1921, leaving a wife and two children. He had written over one hundred opinions at the district court level and over one hundred and thirty-three while on the circuit court of appeals.

George F. Morris<sup>lxxiv</sup>

(1866 - 1953)

Term: 1921 to 1944



George Morris was born on a farm in Vershire, Vermont, the only child of Josiah and Lucina Morris. He grew up on a farm but from an early age desired a career in teaching. Morris completed a three-year course in two years at the Randolph State Normal School in Vermont. After his graduation, Morris taught in numerous New Hampshire and Vermont schools.

He gave up teaching after his interest in law was sparked by his attendance at a number of "justice trials." Morris became the pupil of Mr. Smith of the law firm Smith & Sloane in Wells River, Vermont. Following the advice of Mr. Smith, Morris quit his teaching profession and dedicated himself to the study of law. Morris was accepted to the Vermont Bar in 1891 and to the New Hampshire Bar in 1893.

Morris initially practiced law alone in Lisbon, New Hampshire, but his successes gained him an invitation to join a more prestigious firm, Drew, Jordan, Buckley & Shurtleff of Lancaster, New Hampshire, as a trial lawyer. This move proved to be the springboard for his career in law. He gained his most noteworthy victories as the defense attorney for corporations including railroads, municipalities, and industrial plants, among others. He continued to practice law until 1921, when he was appointed United States District Judge by President Harding. His retirement in 1945 was brought about mainly by his failing eyesight. Judge Morris eventually lost his vision completely.

Though no longer a teacher, Morris continued to contribute to the interests of education. He taught a summer school for teachers and was the Orange County, Vermont county examiner of teachers for two years. He was a member of the Board of Education of Union School District in Lancaster from 1910 to 1924, serving part of that time as chairman of the board. In the political

realm, Morris represented Lisbon, New Hampshire in the state legislature and in the Constitutional Conventions of 1902 and 1905. He also represented Lancaster in the Constitutional Convention in 1912.

Judge Morris had a great love for the outdoors and for outdoor activities. He was an excellent woodsman and enjoyed camping and trapping. Morris would even prepare for trials while accompanying surveyors on extended trips in the mountains. He owned a farm in Northumberland and was very interested in the science of farming. He was president of the County Farm Bureau in 1917.

His wife, Lula J. Aldrich, was very prominent in the affairs of the State. She served as a General Court representative, a State Senator, the President of the Federation of Women's Clubs, and as the Grand Matron of the Order of Eastern Star. Judge Morris was a member of the American Bar Association and the Bar Association of New Hampshire, of which he was president in 1917. He also was a member of the state board of Bar Examiners for six years. Together they had one son, Robert.

Fred C. Cleaveland describes Judge Morris as a:

lawyer's lawyer, a kindly and sympathetic judge in the presence of misfortune and an equally relentless one toward wilful breakers of the law...the record of his many achievements including his courage in carrying on in spite of his physical handicap and his cheerful effort to minimize it will long serve as a stimulant and inspiration.<sup>lxxv</sup>

Judge Morris died in Southern Pines, North Carolina, on March 25, 1953.

Aloysius J. Connor<sup>lxxvi</sup>  
(1895 - 1967)  
Term: 1955 to 1968



Aloysius Connor spent the majority of his life in Manchester, New Hampshire. He attended St. Joseph's High School and then the University of New Hampshire. He received his law degree from Catholic University in Washington, D.C.

Connor practiced law until he was appointed to the State Superior Court by Governor Murphy. Prior to that he had served as Hillsborough County Treasurer (1923-1924) and Manchester City Solicitor (1936-1937). Judge Connor sat on

the Superior Court from 1937 until 1945, hearing the last case in which an individual was sentenced to death by hanging. In 1945, Judge Connor was appointed to the United States District Court by President Roosevelt; he held that position until his death.

Hugh H. Bownes<sup>lxxvii</sup>  
(March 10, 1920)  
Term: 1968 to 1977



A resident of New York, New York, Hugh Bownes attended Columbia University for both his undergraduate and graduate studies, receiving his LL.B. in 1948. Bownes was appointed by President Johnson to the United States District Court for the District of New Hampshire on July 5, 1968. On October 31, 1977 he was appointed to the United States Court of Appeals for the First Circuit by President Carter.

Columbia University honored Judge Bownes with the John Jay Award for Distinguished Professional Achievement. The award was given in 1987, the bicentennial of the Constitution.

It read:

Now the United States Circuit Judge of the United States Court of Appeals for the First Circuit, you can truly be called a lifelong patriot.

As a United States Marine, you fought in the Second World War, rising in rank from a private to major, and earning a Silver Star and a Purple Heart. After studying law at Columbia, you settled in New Hampshire where, in addition to your legal practice, you served on the Laconia City Council, and later, as the city's mayor and as a Democratic National Committeeman. Named to the federal bench by President Lyndon Johnson, you were for some years the only federal judge in New Hampshire. Several of your notable decisions--endorsing the rights of Vietnam War protestors to speak on campus, striking down prayer in the public schools--enhanced your reputation as one who has never let fear of controversy deter him from vigorously upholding the freedoms guaranteed by the Bill of Rights.<sup>lxxviii</sup>

On January 1, 1990, Judge Bownes took senior status.

Judge Bownes was married to Irja Catherine Martikainen, now deceased. He has three children and six grandchildren. Currently he resides in Bow, New Hampshire. He is a member of the Belknap County Bar Association, the New Hampshire Bar Association, the American Bar

Association, the American Trial Lawyers Association, the American Judicature Society, and the American Law Institute.

Shane Devine  
(February 1, 1926)

Term: July 18, 1978 to February 22, 1999



Shane Devine was born in Manchester, New Hampshire, the son of Maurice and Marie Devine, and attended St. Joseph's High School. After graduating, he served in the United States Army from August 1944 until June 1945. After his military service, Devine attended the University of New Hampshire, receiving a B.A. in Government, and then Boston College Law School. He received a Doctorate of Jurisprudence from Boston College in 1952.

On September 3, 1952, Devine was admitted as a practicing attorney to the Supreme Court of New Hampshire. He was a trial lawyer at the firm of Devine, Millimet, Stahl, and Branch from September 1953 until July 1978. On June 27, 1978, Devine was appointed by President Carter to the United States District Court and has been the District Court's Chief Judge since May 4, 1979.

Judge Devine was married to Mary Elizabeth Beebe, now deceased. He has five children. Judge Devine married Priscilla Greenhalge on June 30, 1990.

Judge Devine is a member of the Manchester Lions Club, the American Legion, the Manchester Bar Association, the New Hampshire Bar Association, and the American Bar Association.

Martin F. Loughlin

(March 11, 1923)

Term: May 4, 1979 to December 30, 1995



Martin F. Loughlin was born in Manchester, New Hampshire, in 1923. After attending St. Joseph's High School in Manchester, he served in the United States Army during World War II as a member of an artillery company. He served from 1943 to 1946 in the Third Army, 80th Division (the "Blue Ridge"). Loughlin graduated from Saint Anselm's College in 1947 and then from Suffolk Law School in 1951. He served in the Korean War from 1951 to 1952.

Loughlin was an associate to Conrad Danais, Esq. of Manchester from 1953 to 1958 after which he became a partner at the James V. Broderick law firm. Martin Loughlin was appointed to the New Hampshire Superior Court in 1963. He served as Chief Justice of the State Superior Court from 1978 to 1979. He was appointed Judge of the United States District Court by President Carter on April 26, 1979.

Judge Loughlin is married to Margaret Gallagher and they have seven children. He is a member of the Manchester Bar Association, the New Hampshire Bar Association, and the American Bar Association. Judge Loughlin has recently acquired Senior Status at the federal bench.

Norman H. Stahl

(1931)

Term: 1990 to 1992

Norman Stahl was born in Manchester, New Hampshire, on January 30, 1931. He went on from the Manchester public schools to graduate in 1952 from Tufts College, magna cum laude. Stahl took his law degree from Harvard in 1955, serving as law clerk to Massachusetts Supreme Judicial Court Justice John V. Spalding from 1955 to 1956.

Stahl was admitted to the New Hampshire State Federal bar in 1955 and the New Hampshire State and Federal District Court bars in 1956, joining what was then the firm of Devine and Millimet (subsequently Devine, Millimet, Stahl, and Branch) in the same year. He served as Manchester City Solicitor (1975) and on the board of the New Hampshire Bar Examiners. Stahl has served the citizens of Manchester through a number of organizations, including the Board of

Trustees of Elliot Hospital, the Manchester Historic Association, the Manchester Institute of Arts and Sciences, and the Manchester Jewish Federation. He has been a member of the Commission for Preservation of America's Heritage Abroad and served as a State and National delegate for the Republican Party Convention in 1988. Stahl was appointed to the federal bench by President George Bush after confirmation by the United States Senate on May 7, 1990.

Judge Stahl is married to Sue H. Stahl and currently resides in Bedford. They have two children.

Joseph A. DiClerico, Jr

(1941)

Term: August 17, 1990 to April 2, 2022

Assumed Senior Status: March 15, 2007

Judge DiClerico was born in 1941 and was raised in Nahant, Massachusetts. He attended Williams College, where he received a B.A. in 1963, and Yale Law School, where he received a LL.B. in 1966.

Immediately following law school, DiClerico worked as a law clerk for one year in the District of New Hampshire for District Judge Aloysius Connor. He then served one year as a law clerk for the five Justices of the New Hampshire Supreme Court, where he was the first law clerk in the history of that court. From 1968 to 1970, he was in private practice at Cleveland, Waters and Bass in Concord, New Hampshire. In the fall of 1970, he was hired as an Assistant Attorney General for New Hampshire.

DiClerico was appointed as an Associate Justice on the New Hampshire Superior Court in 1977. He was then appointed to serve as Chief Justice of the Superior Court from 1991 to 1992. In 1992, DiClerico was nominated by President George H.W. Bush to a newly created seat in the District of New Hampshire. He served as the court's Chief Judge from 1992 to 1997, and assumed senior status on March 15, 2007.

Paul J. Barbadoro

(1955)

Term: October 9, 1992 to Present

Assumed Senior Status: March 1, 2021

Steven J. McAuliffe

(1948)

Term: October 10, 1992 to Present

Assumed Senior Status: April 1, 2013

Steven J. McAuliffe was born in Cambridge, Massachusetts in 1948. He was raised in Ashland, Massachusetts, and, in 1966, graduated from Marian High School in Framingham. In 1970 he obtained a bachelor's degree in English, with honors, and was designated a distinguished military graduate of the Virginia Military Institute. In 1973 he obtained his law degree from Georgetown University, was admitted to the District of Columbia Bar, and began a four year tour of duty as a captain in the United States Army Judge Advocate General's Corps in Washington, D.C. Upon completion of military service, McAuliffe became a member of the New Hampshire Bar, served as an Assistant Attorney General from 1977 to 1980, and then joined the Concord law firm of Gallagher, Callahan & Gartrell, P.A., becoming a partner in 1983, and practicing in the field of commercial and general litigation. In 1992 he was appointed to the United States District Court for the District of New Hampshire by President George H. W. Bush. McAuliffe served as the chief judge of the district from November 1, 2004, to October 31, 2011.

McAuliffe has served as a member and Vice-Chair of the University System of New Hampshire Board of Trustees; President, and member of the board and of various committees, of the New Hampshire Bar Association; Member of the Board of the Office of Public Guardian; and Chair of the Rhodes Scholarship Selection Committee for New Hampshire. He holds a private pilot's license, and attempts to golf. Judge McAuliffe was married to the late S. Christa McAuliffe, and, in 1992, married Kathleen E. McAuliffe. He has two children, and resides in Concord.

Joseph N. Laplante

(1965)

Term: December 28, 2007 to Present

Joseph N. Laplante was nominated and confirmed to the federal bench in 2007, joining the United States District Court for the District of New Hampshire, and has served as its Chief Judge on November 1, 2011.

He was born in Nashua, New Hampshire on July 27, 1965. He attended Nashua High School, and went on to Georgetown University, earning an A.B. *cum laude* in American Studies in

1987 and his J.D. *cum laude* from Georgetown Law in 1990. After passing the New Hampshire bar examination, Laplante joined the law firm of Wiggin & Nourie, PA in Manchester and Nashua, New Hampshire.

In 1993, Judge Laplante began his career in public service with the New Hampshire Attorney General's Office, serving as an Attorney, then Assistant Attorney General and, ultimately, Senior Assistant Attorney assigned to the (then now) Homicide Unit. From 1998 to 2000, Laplante worked with the U.S. Department of Justice's Criminal Division, Public Integrity Section as a member of the Campaign Financing Task Force, where he tried cases and argued appeals in Washington, D.C. and Los Angeles, CA. In 2000, he became an Assistant United States Attorney with the U.S. Attorney's Office in Boston, Massachusetts. Two years later, Laplante took a position in the U.S. Attorney's Office for the District of New Hampshire, primarily working on the New England Organized Crime Drug Enforcement Task Force, and eventually serving as First Assistant United States Attorney. During his tenure as a federal prosecutor, Judge Laplante received the New Hampshire Bar Foundation's Robert Kirby Award, the Lt. Steven P. Demo Law Enforcement Award, the Boston Police Department Distinguished Service Award, the New England Narcotic Enforcement Officers' Association's "Billy Yout Memorial Award," several Congressional Law Enforcement Awards, and was named the state's top prosecutor by *New Hampshire Magazine* in 2003.

Judge Laplante is an adjunct law professor, teaching Statutory Interpretation at University of New Hampshire School of Law and Boston College Law School. He is the Vice Chair of the Rivier University Board of Trustees, and sits on the Board of Governors of the Georgetown University Alumni Association. He also serves as Co-chair of the New Hampshire Supreme Court Access to Justice Commission.

Judge Laplante is a member of the Webster-Batchelder American Inn of Court, and has served on two New Hampshire Bar Association committees: the New Lawyer's Committee (past chairman), and the Professionalism Committee (past chairman). He is Vice Chair of the Board of Overseers of the St. Paul's School Advanced Studies Program, which he also attended as a student in 1982. Judge Laplante has served on the Nashua Region Board of the New Hampshire Charitable Foundation (chairman 2006-08), the Nashua Police Athletic League and Youth Safe Haven (chairman 2003-08, current Gymnasium Director), and the St. Christopher School Advisory Board. He coordinates the youth wrestling program (K-12th grade) for the Boys & Girls Club of Greater

Nashua. He is a boxing referee, licensed to officiate both professional and amateur bouts.

Landya B. McCafferty

(1962)

Term: December 18, 2013 to Present

Samantha D. Elliott

(1975)

Term: December 22, 2021 to Present

## CASES FROM THE UNITED STATES DISTRICT COURT FOR NEW HAMPSHIRE

### A Case of Judge Sullivan

The following case, heard at Portsmouth on June 7, 1791, is believed to be one of the first cases brought before the United States District Court for the District of New Hampshire. The text below is partially transcribed from the Court records:

Joseph Whipple Esq., collector for the port of Portsmouth, libellant of five bags, one barrel and one half barrel of Coffee, marked B, as in his complaint and libel exhibited to this Court the ninth day of March, 1791 - wherein was set forth that some person or persons, to the informant unknown, did lately import into the port of Portsmouth, within said District, from beyond the seas in some vessel unknown to said informant, five bags, one barrel, and one half barrel of coffee marked B, and unloaded the same within the port aforesaid without lawfully entering it at the said collector office and paying or to be paid the duties due, to the said United States, contrary to the law in such case made and provided. Whereby the said coffee with the barrels and bags containing the same became forfeited to be duly possessed of as the said law directs. Wherefore he caused the same two barrels seized, and on the advisement of this honorable court thereon and that the said coffee with the barrels and bags containing the same might be taken into the custody of the officers of this court and be decreed to remain forfeited, one for the use of the United States and the other in equal shares as the law directs. Whereupon it was ordered by the Court that the Marshal or his Deputy should immediately take into custody the aforesaid articles complained against and have them at a Special District Court to be [held] at Portsmouth in said District on the first Tuesday of June 1791 for trial and that the said Marshal or his Deputy should give notice of said libel with the order of Court thereon as the law in such cases directs. And now on the said seventh day of June 1791 solemn proclamation being made for any person to appear and show cause, if any they had, why the aforesaid Coffee, with the barrels and bags containing the same should not be declared forfeited, and no one appearing to make answer thereto or claim the same, the said Coffee with the

barrels and barges aforesaid are, by the Court, declared and decreed forfeited and it is therefore ordered by court that the said Coffee with the barrels and bags containing the same be sold at public auction on the twenty second day of June instant, and that the proceeds thereof, after deducting all proper costs and charges, be disposed of in the following manner. One [amount] thereof to and for the use of United States and the other [amount] to be divided into three equal parts and paid to the Collector, Naval Officer, and Surveyor of the District of New Hampshire. Cost of prosecution is taxed at ten dollars and twenty one cents.

### A Case of Judge Pickering

This case is thought to be the last case that Judge Pickering heard before his impeachment by the United States Congress. The following comes from the case as it appears in original court records:

The United States of America plaintiff against Lewis Barnes of Portsmouth in said District. Defendant is a plea of debt, for that the said Lewis the twenty fourth day of March 1802, at a place left Boston [arrived] at said Portsmouth by his writing obligatory of that date by his signed sealed in Court be produced acknowledges himself held and bound to said United States in the form of fifteen hundred dollars to be paid on demand. Yet tho' often requested, he has paid said firm, but neglects it to the damage of the said United States, as they say the sum of fifteen hundred dollars. The said Lewis being publicly called in court doth not appear [and] makes default and the United States, by then Attorney, appearing and proving their declaration, it is thereupon considered by the Court that the said United States recover against the said Lewis Barnes the sum of five hundred fifty three dollars and seventeen cents debt and costs of suit taxed at fifteen dollars and eighty two cents.

### A Case of Judge Harvey

A large number of cases heard while Judge Harvey served on the district court involved naturalization. The majority of people seeking naturalization were from Great Britain and

Ireland; however, there was also a significant number from other areas such as Nova Scotia, Canada and France. The following text is partially transcribed from the court records of Daniel Collins' naturalization which occurred in the December Term of 1858. It demonstrates a typical naturalization case.

Daniel Collins a free white person resident in Portsmouth in said District of New Hampshire, and heretofore an alien and a subject of the Queen of Great Britain and Ireland having presented to this court his petition to be admitted to become a citizen of the United States, and in appearing to this court, by the testimony of two citizens of the United States, that said Collins was born in the county of Cork in Ireland, on or about the tenth day of May, in the year of our Lord, one thousand eight-hundred and twenty nine, that he emigrated from Ireland, and arrived in Boston in the United States, on or about the eighth day of May, A.D. 1845, that he has resided in the United States for five years last-past, and ever since he was eighteen years of age, and within the State of New Hampshire for one year last-past, and that he has, during all the time of his residence in the United States, behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposes to the good order and happiness of the same, that he hath this day in the Court, made report of himself and declared his intention to become a citizen of the United States, according to law, and that for more than three years last-past, in good faith intended to become a citizen of the United States, the said Collins was permitted to take and subscribe, and did, on the twenty fourth day of December, A.D. 1858, take and subscribe in open Court; a solemn oath that he does absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign Prince, Potentate, State, or Sovereignty whatever, and particularly to Victoria Queen of the United Kingdom of Great-Britain and Ireland, and that he will support the Constitution of the United States, and was admitted to become a citizen of the United States.

#### A Case of Judge Clark

This case is partially transcribed from early court records and concerns a dispute that arose out of a violation of Internal Revenue laws. In one sense, this case was a harbinger of what this

country would witness fifty years later during Prohibition. *United States v. One Still* was heard during the December Term of 1871:

Be it remembered that on this nineteenth day of September in the year of our Lord one thousand eight hundred and seventy one, comes in his own proper person Henry P. Rolfe Esquire of Concord is said District Attorney of the United States for the District aforesaid, and in the name and behalf as well of the United States as of Elijah M. Topliff Collector of Internal Revenue of the second collection District of New Hampshire and of all the persons concerned propounds and gives the said Judge to understand and be informed that on the fifth-day of May one thousand eight hundred and seventy at Manchester in said District and within said second collection District the said Elijah M. Topliff Collector as aforesaid seized and caused to be seized the following goods to wit: one still of the value of one hundred dollars and now hath the same in his custody as being forfeited to the United States for the causes hereinafter named, to wit: for that heretofore on a day prior to said seizure, that is to say in the month of December in the year of our Lord one thousand eight hundred and sixty nine, and in the month of January one thousand eight hundred and seventy, the said still was used in distilling spirituous liquor at said Manchester by one John Smith without having paid a license for carrying on the business of a distiller contrary to the form of the Statute in such case made and provided by reason whereof the said still become and is forfeited to the United States. Wherefore the said Attorney prays that process in due form of law may issue against the said property to enforce the forfeiture thereof and requiring notice to be given to all persons concerned to appear and show cause on the return day of said process why said forfeiture should not be decreed.

And now, due notice having been given and no person appearing to claim the goods labelled, it is ordered that the same be sold by the Marshall and the proceeds thereof paid into the Registry of the Court and that the same be declared condemned and forfeited according to the statute in such case made and provided and that the cause abide the further order of the Court.

A Case of Judge Morris

*United States v. Northern Railroad, et al.*  
Civil No. 29, September 1939

With the conflict in Europe escalating into war, the United States Secretary of War began to involve the country in projects that maintained and prepared the defenses of the United States. These projects included the building of roads, the upgrading of waterways, and the construction of public works on rivers and harbors. Along with these efforts came litigation from individuals and companies whose lands had been altered, destroyed, or appropriated by the government. The following text illustrates the consequent battles over land rights, and comes from a petition to the United States District Court for the District of New Hampshire:

To the Honorable George F. Morris, Judge of the District Court of the United States for the District of New Hampshire.

This petition of the United States of America, brought by Alexander Murchie, United States Attorney for the District of New Hampshire, acting under the instructions of the Attorney General and at the request of the Secretary of War, respectfully shows as follows:

That by the Acts of Congress entitled 'An act to facilitate the prosecution of works projected for the improvement of rivers and harbors', approved April 24, 1888 (25 Stat. 94, 33 U.S.C. 591); Section 5 of 'An act making appropriations for the construction, repair and preservation of certain public works on rivers and harbors, and for other purposes', approved July 18, 1918 (40 Stat. 911, 33 U.S.C. 594); 'An act authorizing the construction of certain public works on rivers and harbors for flood control and for other purposes', approved June 22, 1936 (49 Stat. 1570), as amended by 'An act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes', approved June 28, 1938 (52 Stat. 1215) . . . the Secretary of War is authorized and empowered to cause proceedings to be instituted in the name of the United States of America in any court having jurisdiction of such proceedings for the condemnation of land, rights

of way, or material needed to enable him to maintain, operate and prosecute works for the improvement of rivers and harbors for which provision has been made law. That the Secretary of War has found and determined that it is necessary to acquire the land hereinafter described because the same is needed in connection with the Franklin Falls Reservoir on the Pemigewasset River, a flood control project in the Merrimack River Basin.

That the efforts of the Secretary of War to acquire the said land at a reasonable price, by purchase, have failed and, therefore, the Secretary of War has determined that it is necessary to acquire the land by condemnation, under judicial process.

That the Legislature of the State of New Hampshire, in which State the said land lies, has by Chapter 149 of the New Hampshire Laws of 1939 consented to the acquisition by the United States of America, by purchase, condemnation, or otherwise, of any land within said State required for use in connection with the construction, maintenance and operation of the said Franklin Falls reservoir.

Upon consideration, [by the Court] of the petition for condemnation . . . [i]t is ordered that the Secretary of War shall have the right forthwith to take immediate possession of the land sought to be condemned herein, to the extent of a fee simple interest therein, and to proceed with such public works thereon as have been authorized by Congress.

#### A Case of Judge Connor

*Charles L. Morley v. Cranmore Skimobiles, Inc.*

Civil Action No. 411, July 5, 1945

*Charles L. Morley v. Cranmore Skimobiles, Inc.*, is interesting because it illustrates the dilemma that the potential for litigation can impose on the manufacturer of a product -- to manufacture and market new products is to open new avenues to liability actions. In this case, the defendant is a ski lift manufacturer accused of negligence in the operation of a new ski lift.

The said defendant on to wit February 16, 1944 at said Conway and prior thereto was the proprietor of and engaged in the business of carrying passengers for hire by means of a certain contrivance or device known as a ski tow or skimobile, designed for the purpose of transporting from the base of Cranmore Mountain, so-called, in said Conway to the top of a certain slope or slopes of said mountain, by means of cars conveyed along a certain track by endless cable, persons with skiing equipment desiring transportation to the top of said slope or slopes.

On said date the said plaintiff was at the invitation of the said defendant a passenger for hire in one of said cars. While the said defendant was engaged in carrying said plaintiff as a passenger as aforesaid the said defendant...stopped or permitted said ski tow or skimobile, including the car which the said plaintiff was a passenger, to be stopped and permitted the same to remain in a stationary position for a period of time upon a section of the track high above the ground, without notice to the plaintiff of any purpose either to assist him to leave said car or to resume the operation of said ski tow or skimobile. The said plaintiff after waiting a reasonable period for said ski tow to resume operation, in the exercise of due care undertook to leave said car and travel upon foot along said track to a point from which he could conveniently reach the ground. While the said plaintiff was walking upon said track as aforesaid, said defendant, its agents or servants, without warning to the said plaintiff, placed said ski tow or skimobile in operation, including the car which the said plaintiff had previously vacated, so that to avoid being struck and thrown from said track, the said plaintiff was obliged to jump from the track to uneven ground below.

The said plaintiff . . . suffered great and serious personal injuries including a ruptured spleen, causing him great mental and physical anguish, has been put and will be put to great expense for medical care and attendance, has been and will be incapable to perform his usual labor, and has suffered and will suffer other losses; all to his damage as he says in the sum of twenty thousand dollars (\$20,000).

Wherefore the said Charles L. Morley demands judgment against the said Cranmore Skimobiles, Inc. in the sum of twenty thousand dollars (\$20,000), and for such other relief as may be just.

It is considered by the Court, the Honorable Aloysius J. Connor, District Judge, that the plaintiff take nothing by his complaints. [The court does not find any means of negligence on the part of the defendant. The court finds this case frivolous and also finds that defendant have judgment on the verdict against the plaintiff, and recover from said plaintiff its costs.

### A Case of Judge Bownes

*George and Maxine Maynard v. Neal R. Wooley, Individually  
and  
as Chief of Police of Lebanon, N.H.*  
Civil Action No. 75-57, February 9, 1976

*Maynard v. Wooley* arose out of dissatisfaction with the New Hampshire statute which "required that all number plates for non-commercial vehicles, with some exceptions, shall have the state motto 'Live Free or Die' embossed on them."<sup>lxxxix</sup> Another statute stated that it is, "a misdemeanor knowingly to obscure the figures or letters on the license plates, and under New Hampshire Law, the 'letters' include the state motto."<sup>lxxx</sup>

The Maynards, who were members of Jehovah's Witnesses, were "arrested, prosecuted, and convicted" on three occasions for violating the statutes.<sup>lxxxii</sup> Bringing an action seeking declaratory and injunctive relief against enforcement of the state statute, the Maynards contended that the New Hampshire State motto, "Live Free or Die", was "repugnant to their moral, religious, and political beliefs, and therefore object[ed] to having the motto displayed on their automobile license plates."<sup>lxxxii</sup> The District Court faced an important constitutional question.

It is the practice to have three judges form a panel when the court is faced with a constitutional issue. This practice was mandated by article 28 of the U.S.C. ' 2284. The three-judge panel allows for a better researched and considered judgement to be made. In this instance of a three-judge decision, the court held that:

[the] doctrine of equitable restraint did not apply where plaintiffs were seeking relief against future arrest and prosecution and were not seeking to enjoin a pending

criminal prosecution; that acts of plaintiffs in covering the motto on their license plates, pursuant to their religious beliefs, constituted 'symbolic speech' within the ambit of the First Amendment; and that the state had not demonstrated a sufficient interest to justify regulation thereof, so that the statute was unconstitutional as applied to plaintiff.<sup>lxxxiii</sup>

This decision was appealed to the Supreme Court of the United States, which granted certiorari. Writing the opinion of the Court upholding the District Court ruling, Chief Justice Warren Burger held that:

The state may not constitutionally require individuals to participate in dissemination of an ideological message by displaying it on his private property in a manner and for the express purpose that it be observed and read by the public; and that the state could therefore not require plaintiffs to display the state motto upon their vehicle license plates.<sup>lxxxiv</sup>

#### A Case of Judge Devine

*Sandra Garrity, et al. v. Hugh J. Gallen, et al.*  
Civil Action No. 78-116-D, August 17, 1981

In *Garrity v. Gallen*, a trial lasting forty days before the court, a class action was brought by residents of a New Hampshire school for the mentally retarded asserting that their right to habilitation required that they be placed in the least restrictive environment, i.e., community placement. Chief Judge Devine found that: (1) residents had an implied private right of action against Secretary of Health and Human Services for purpose of compelling him to perform his mandatory duties under Developmental Disabilities Assistance and Bill of Rights Act but residents were precluded from proceeding with a civil rights suit based on such Act against state defendants; (2) residents possessed a private right of action which could be enforced pursuant to the Rehabilitation Act; (3) the Rehabilitation Act could not be construed so broadly as to require deinstitutionalization of residents, but state officials had violated the Act by denying to certain individuals the benefit of individual service plans and by making placements and disbursing services based on the generalized assumption that certain groups were unable to benefit; (4) residents were entitled to relief under the Education of the Handicapped Act and state statutes; and (5) residents did not have substantive due process right to habilitation in a least restrictive environment, i.e., community placement.<sup>lxxxv</sup>

This case is representative of a growing number of cases that attempt to deal with the increasingly complicated problems of a society that cherishes its right to liberty: "this litigation inhabits the twilight area of developing law concerning...rights of the...mentally retarded."<sup>lxxxvi</sup> *Garrity v. Gallen* was appealed to the United States Court of Appeals, and affirmed.<sup>lxxxvii</sup>

### A Case of Judge Loughlin

*United States, et al. v. Ottati & Goss, Inc., et al.*  
No. C80-225-L, December 9, 1985  
Cited as F. Supp. 1361 (D.N.H. 1986):

Actions were brought by federal, state, and local governments against operators and former operators of drum reconditioning businesses, owners of property, and generators of wastes contained in drums sent for reconditioning under various theories including violations of federal waste disposal laws, common-law nuisance and violations of municipal ordinances. The District Court, Loughlin, J., held that: (1) evidence was sufficient to find that liability was joint and several; (2) the Environmental Protection Agency was not, by failure, to first give generators of hazardous waste opportunity to take remedial action; and (3) evidence was sufficient to find liability of firms generating wastes in light of failure to show that all their drums had been removed prior to initiation of cleanups.<sup>lxxxviii</sup>

This case first appeared in court on May 15, 1980, and ended on March 17, 1988. It is undoubtedly the longest case that has ever been brought before the United States District Court for the District of New Hampshire. The trial was bifurcated (divided) into two phases for efficiency: a liability phase in which the defendants were assessed for blame, and a damage phase in which degree of damages was assessed. There were 119 days of testimony during the liability phase of the trial and 68 days during the damage phase. The cleanup operations ordered by the court will continue into the twenty-first century.

*United States v. Ottati & Goss* will be remembered as the first major hazardous waste litigation in the country. It will also stand as a memorial to the character of fundamental fairness attributed to Judge Loughlin. While finding the generators jointly liable and assessing significant damages as well as injunctive relief, Judge Loughlin also criticized the Environmental Protection Agency (EPA) and denied the EPA's claim for certain indirect costs.

In his opinion with regard to the damage phase, Judge Loughlin stated:

To add further fuel to the fire, the United States has the temerity to state there is no reason for its ustulation by the court.

Without reiterating what is self-evident, the cavalier and hubristic actions of the EPA in this litigation warrant the use of punitive measures by the court. This litigation appears to be interminable and this ruling may be considered a harbinger if future court hearings are necessitated relative to monitoring.<sup>lxxxix</sup>

## THE CLERKS OF THE COURT

Every court system, whether local, state, or federal, has one or more Clerks of the Court. The Clerk of the Court is the chief administrative officer of the court; it is the clerk's job to see that the court runs smoothly. A clerk schedules trials by listing them on the docket, handles the paperwork that comes in and out of the court, informs lawyers of deadlines that pertain to court business, handles the court's budget, and manages court personnel.

The Judiciary Act of 1789 provided for the appointment of clerks and charged them with keeping all official court records and documents. In the early courts the clerks handled the majority of the tedious or time-consuming work brought before the court. This allowed the judges to concentrate on the legal matters before them.

Up until 1839, the Clerk of the District Court for the District of New Hampshire was also the Clerk of the Circuit Court for the District of New Hampshire. Life was busy for these clerks; they had to travel with the courts between Exeter and Portsmouth and they had to handle all the extra paperwork caused by the large number of trials continued. In the Final Records of the Circuit Court for New Hampshire, for example, the phrase "----- v. ----- cont'd" is very common. This means that the case in question was postponed; it did not take up any courtroom time. This does not mean that it did not take up any court time, however, because the clerk's office would continually be in communication with the parties ensuring that deadlines were met and scheduling was updated. The clerks were required to travel extensively both to maintain current records and to make sure that all other necessary records and documents were present wherever the Circuit Court was sitting. After 1839 the judge of each court appointed his own clerk.

The federal judicial system has grown tremendously since its inception in 1789. Today, the federal judiciary has to deal with a huge volume of cases which generate thousands of pages of documents. Throughout these two hundred years of growth, the Clerks have been responsible for adapting to meet the demands of the burgeoning court system. The Clerks of today's court are responsible for the following major tasks: (1) preparing and managing the annual budget, (2) hiring personnel, (3) designing and managing training programs, (4) consulting with and making recommendations to the judges concerning court policies and procedures, (5) conducting studies and preparing statistical and narrative reports, (6) informing bar members of the proper filing procedures and requirements associated with bringing a case to trial, and finally, (7) ensuring that

all court proceedings are properly and thoroughly documented and that cases and trials are moved through the system efficiently.

The clerks' unique importance in the running of the courts means that new members of the bar are well advised when told that "[o]ne court official essential for any lawyer to cultivate as a friend is the clerk."<sup>xc</sup>

<u>Name of Clerk</u>	<u>Tenure</u>
1. Jonathan Steele	November 1789 - May 1804
2. Richard C. Shannon	May 1804 - April 1814
3. George W. Prescott	April 1814 - February 1817
4. Payton R. Freeman	March 1817 – May 1821
5. William Claggett	May 1821 - March 1825
6. Samuel Cushman	March 1825 - March 1826
7. Charles W. Cutter	March 1826 - May 1841
8. John L. Hayes	May 1841 - December 1846
9. Albert R. Hatch	January 1847 - May 1867
10. Charles H. Bartlett	May 1867 - June 1883
11. Benjamin F. Clark	June 1883 - August 1891
12. Fremont E. Shurtleff	August 1891 - August 1900
13. Burns P. Hodgman	August 1900 - September 1923
14. Thomas B. Donnelly	September 1923 - October 1941
15. Ray E. Burkett	October 1941 - December 1945
16. William H. Barry, Sr.	December 1945 - February 1957
17. Charles M. Sawyer	March 1957 - July 1966
18. Elizabeth M. Hoyt	August 1966 - July 1969
19. William H. Barry, Jr.	August 1969 - May 1984
20. Kathleen Northrup	May 1984 - November 1984
21. James R. Starr	November 1984 - January 2014
22. Daniel J. Lynch	January 2014 - Present

Jonathan Steele (September 3, 1760 - 1824)

Jonathan Steele was born in Londonderry, New Hampshire. He began the study of law as a teenager under the guidance of John Sullivan of Durham. Mr. Steele eventually established his own practice in the town of Durham.

When John Sullivan, Steele's father-in-law, was appointed United States Judge for the District of New Hampshire in 1789 he appointed Jonathan Steele Clerk of the Court. After Judge Sullivan's death in 1795, Mr. Steele was reappointed to the position by the new District Judge, John Pickering. Charles Bell provides an interesting note about Jonathan Steele. He says,

When [Judge Pickering], by a perversion of justice, was removed from the judgeship, Steele, who had been one of the witnesses against him, was tendered the appointment of U.S. District Attorney, but declined to accept it, avowedly because he was unwilling to profit by the misfortune of his former chief, to which he had been made to contribute by his testimony.<sup>xci</sup>

Evidently, the Republicans in power, who voted to impeach Judge Pickering, wanted to reward Mr. Steele for his assistance. Mr. Steele would not involve himself further in these party politics.

Jonathan Steele retired from his position as court clerk in 1804 to be a presidential elector for the state of New Hampshire. In 1805, he was elected as a representative from Durham to the state legislature. Finally, in 1810, Mr. Steele was appointed to the Superior Court by Governor Jeremiah Smith. Judge Steele relinquished his seat on the bench after two years, finding both the position and the salary unsatisfactory. He returned to the private practice of law for the remainder of his life.

Richard Cutts Shannon<sup>xcii</sup> (May 9, 1743 - April 7, 1821)

Richard Shannon was born in Newcastle, New Hampshire, the son of Cutt and Mary Shannon. Richard Shannon spent several years in the counting rooms of Portsmouth receiving a mercantile training. However he felt a stronger inclination for the legal profession and switched to the study of law in the office of Samuel Livermore. In 1774 Mr. Shannon was chosen to be a town attorney for Portsmouth. In 1775, he moved to Hollis. Shannon was a Loyalist, i.e., loyal to the English crown, and was not sympathetic to the cause of the Sons of Liberty. For this reason, he was imprisoned in Exeter in 1777 over a political dispute in which he opposed their rebellious activities. It is speculated that his time in jail greatly changed his attitude toward the

revolution because Richard Shannon was elected by the patriotic town of Hollis to represent it in the state legislature in 1787.

In 1804 Mr. Shannon was appointed Clerk of the United States District Court through the influence of Governor Langdon. Shannon resigned from his office in 1814.

George Washington Prescott<sup>xciii</sup> (January 8, 1776 - March 17, 1817)

George Washington Prescott was born in Kittery, Maine. He began studying law under Theophilus Parsons and William Prescott. After first establishing his practice in Haverhill, Massachusetts, Prescott moved it to Portsmouth, New Hampshire. It is thought that Governor Langdon had a great deal to do with Prescott's move to Portsmouth. Langdon was a Republican surrounded by Federalists lawyers. He urged Prescott, also a Republican, to settle down in Portsmouth and be his, Langdon's, legal advisor. As historian Charles Bell recounts the story,

Prescott was found hardly a match for Webster and Mason, and Langdon took his protege to task for suffering his Federal opponents to get the advantage of him. "Why, if I were you," urged the governor, whose notion of literature of the bar was rather limited, "I'd study the statutes till I got every word of them by heart, before I would allow those fellows to beat me."<sup>xciv</sup>

A veteran of the War of 1812, Prescott was a captain in the Army under General Harrison at the battle of Tippecanoe. After the war he returned to the practice of law in Portsmouth. In 1814 Mr. Prescott was appointed Clerk of the United States District Court, a position which he held until his appointment as Judge of the Court of Common Pleas in 1817.

Peyton R. Freeman<sup>xcv</sup> (November 14, 1775 - March 26, 1868)

Peyton Randolph Freeman, son of Jonathon and Ruth (Huntington) Freeman, was born in Hanover, New Hampshire on November 14, 1775. He graduated from Dartmouth College in 1796, and studied law in Amherst at the office of William Gordon and in Hanover at the office of Benjamin J. Gilbert.

Freeman began legal practice in Hanover but moved to Portsmouth in 1803. Mr. Freeman was deputy Secretary of State from 1816 to 1817. In 1817 he was appointed Clerk of the United States District Court for the District of New Hampshire and retained that position until 1821.

Freeman was fond of the study of law, most especially of its more obscure points. As a result of his scholarship and hard work, he was regarded with respect as an able counselor. His

opinions and aid were often sought in equity cases and complicated questions of law. Charles Bell says, "In the process of time he became known as a black-letter lawyer, and was resorted to for the solution of questions especially unusual and recondite."<sup>xcvi</sup>

William Claggett<sup>xcvii</sup> (April 8, 1790 - December 28, 1870)

William Claggett was born in Litchfield, New Hampshire, the son of the Honorable Clifton Claggett of the Superior Court. After graduating from Dartmouth College, William served his legal apprenticeship with his father, Edmund Parker of Amherst, and George Sullivan of Exeter.

In 1821 Mr. Claggett was appointed Clerk of the Circuit Court and District Court of the United States, a position he held for four years. After his work in the courts, Mr. Claggett served as a naval officer in Portsmouth. In 1825, he was elected to the state Senate.

During his latter years, Mr. Claggett's practice slowly diminished, and he was frequently unemployed. The decline of what had seemed so bright a future has been attributed to a character flaw which caused his clients to lose confidence in his professional abilities.

Samuel Cushman<sup>xcviii</sup> (July 21, 1783 - May 22, 1851)

Samuel Cushman was born in Hebron, Maine, the son of Job and Priscilla Cushman. Samuel attended area schools and received his legal training with John Holmes of Alfred, Maine, a man known as an eccentric genius. In 1807, Cushman established his own practice in Parsonfield, Maine, which he maintained for nine years until he moved to Portsmouth, New Hampshire.

In 1825, Mr. Cushman was appointed Clerk of the United States District Court. He served for only one year. Mr. Cushman was very active politically, serving as an executive councilor and as a Congressman for two terms (starting in 1835). He was appointed Justice of the Police Court following the adoption of the Portsmouth Charter in 1850, but died the following year.

Charles W. Cutter<sup>xcix</sup> (June 11, 1799 - August 6, 1856)

Charles William Cutter was born in Portsmouth, New Hampshire. Cutter studied law in the office of Jeremiah Mason of Portsmouth. After his admission to the bar in 1821 he established his own practice, also in Portsmouth.

Mr. Cutter was well respected for his abilities with both pen and voice. He was a contributor to the Portsmouth "Journal", and later was its associate editor from 1825 to 1830. During a short period living in Dover, Mr. Cutter founded the Dover "Republican."

Mr. Cutter served as a Portsmouth representative in the state legislature for several years before being appointed Clerk of the United States District Court on March 13, 1826. He held that position for fifteen years. In 1841, Cutter was appointed naval storekeeper and from 1849 to 1851 he served as navy agent.

Historian Charles Bell describes Mr. Cutter as,  
a noble, generous-hearted man. Well informed in the literature of the day, interested in historical research, an attractive public speaker on the platform or from the desk, he was capable of winning distinction in almost any calling.<sup>c</sup>

Charles William Cutter was well respected in the area of politics as well. He had close acquaintances with such notables as Daniel Webster and many other gentlemen of the government. Based on his experiences, however, he advised "every young man to follow any honest calling rather than rely for support upon public office."<sup>ci</sup>

John L. Hayes<sup>cii</sup> (April 13, 1812 - April 18, 1887)

John Lord Hayes was born the son of the Honorable William and Susan Hayes in South Berwick, Maine. John Hayes studied law in his father's office and for a year at Harvard Law School. He practiced law in Portsmouth, New Hampshire, from 1835 until 1841. He was then appointed Clerk of the United States District Court and served as such for five years. In 1846 he became general manager of the Katahdin Iron Works Company of Maine. In 1849 he traveled to Washington, D.C. to establish a firm. Mr. Hayes then served as Chief Clerk of the United States Patent Office from 1861 to 1865 and later became Secretary of the National Association of Wool Manufacturers until his death in 1887.

Mr. Hayes was an avid scholar. His academic accomplishments include the translation into English of several medieval hymns, an expertise in textiles, the study of numerous sciences, contributions to the press, and lectures on various topics. He is said to have published more than one hundred papers on political, legal, and industrial subjects. In 1878, Dartmouth College conferred the degree of LL.D. upon John Lord Hayes.

Albert R. Hatch<sup>ciii</sup> (October 10, 1817 - March 5, 1882)

Albert Ruyter Hatch was born in Greenland, New Hampshire. After graduating from Bowdoin College in 1837, he studied law at the office of Ichabod Bartlett. Mr. Hatch went on to begin his own practice in Portsmouth. For many years he was the foremost practitioner in his county. He was a studious lawyer, always prepared for his cases and available in court. Mr. Hatch made sure of his facts before he gave an opinion; for this among other reasons he was well respected in his profession.

He served as a Portsmouth representative in the General Court in 1847 and 1848. In 1848 Mr. Hatch was appointed Rockingham County Solicitor, a post he held for eight years. Also in 1848 Mr. Hatch was appointed Clerk of the United States District Court and held that position for twenty-five years.

Albert Hatch resigned his post as clerk to again serve in the state legislature from 1873-1876. He served as Speaker of the House in 1874, as his party was in the majority.

Outside of the realms of law and politics, Mr. Hatch continued to be a busy man. He was interested in Freemasonry, was an active member in various Masonic bodies, and was the Commander of the Knights Templar in Portsmouth for twenty-five years. Albert Hatch was

active in local issues, serving as the director of several companies in Portsmouth, including the Railroad and the Portsmouth Bridge Company. He was also an active member in the Episcopal Church, serving as vestryman and trustee of various parishes.

Charles H. Bartlett<sup>civ</sup> (October 15, 1833 - January 25, 1900)

Charles Henry Bartlett was born in Sunapee, New Hampshire, the fourth son of John and Sarah Bartlett. Much of his early life was spent working on the family farm; he attended school only during the winter months. During his early teen years, Charles Bartlett developed an interest in the study of law. Eventually he worked and studied at the offices of Metcalf & Barton of Newport, George & Foster of Concord, and Morrison & Stanley of Manchester. Mr. Bartlett was admitted to the state bar in 1858 and established his practice in Wentworth, New Hampshire. In 1863 he changed his place of residence to Manchester.

In 1867, Mr. Bartlett was appointed Clerk of the United States District Court by Judge Daniel Clark. While Clerk of the Court, he held several other public offices: Mayor of Manchester, 1872-1873, (a position from which he resigned because the federal government would not allow him to hold both the clerkship and a municipal office), Clerk of the Senate, 1861-1865, and United States Commissioner, 1872. He was also a trustee of the Merrimack River Savings Bank from 1874 until 1900. He retained his position as Clerk until his election to the state senate in 1883.

Mr. Bartlett was an extremely active man throughout his life. He contributed time, money, and leadership to innumerable charities and to public and social organization. He dedicated his life to his country, his religion, and his fellow man. Dartmouth College conferred an honorary M.A. upon Charles Bartlett in 1881.

Benjamin F. Clark<sup>cv</sup> (June 25, 1843 - Unknown)

Benjamin Franklin Clark was born in Townsend, Massachusetts, the son of Benjamin and Maria Clark. He attended the public school system in Lowell and Lunenburg, Massachusetts and at seventeen apprenticed at a machine shop in Fitchburg, Massachusetts.

On June 28, 1861, Clark enlisted in the Army, joining Company B, Fifteenth Regiment, of the Massachusetts Volunteer Infantry. He was discharged after being blinded in his right eye by gunshot. He moved to Conway, New Hampshire, where he managed a machine factory owned by B.F. Sturtevant.

Judge Edgar Aldrich appointed Mr. Clark Clerk of the United States District Court in 1883, a position he held until 1891 when he became a member of the New Hampshire Legislature.

Fremont E. Shurtleff<sup>ccvi</sup> (August 5, 1861 - Unknown)

Fremont Elderkin Shurtleff was born in Hatley, Quebec. He was the son of Dr. Solon and Rebecca Shurtleff and was educated in the public school system of St. Johnsbury, Vermont. Later he went on to attend the University of Michigan, and graduated in 1884 with a B.A.

Shurtleff worked in the freight offices of the Boston-Lowell and Boston-Maine Railroads for four years after his graduation. In 1888 he was appointed Clerk Stenographer of the United States District Court for the District of New Hampshire; he held that position until 1891. Judge Edgar Aldrich appointed him clerk of the court that year. Mr. Shurtleff held that position until 1900 when he began to practice law in Concord. He served as United States Commissioner during his term as Clerk of the United States District Court.

Burns P. Hodgman<sup>cvi</sup> (December 30, 1875 - Unknown)

The son of Charles and Sarah Hodgman, Burns Hodgman graduated from Littleton (his birthplace) High School in 1895. Following high school, he attended Boston University, graduating cum laude with an LL.B. in 1898. Mr. Hodgman was admitted to the New Hampshire Bar in that year and began a practice in Littleton. He was appointed Clerk of the United States District Court in 1900 and served in that capacity until 1923.

Burns Hodgman held a wide variety of positions, including United States Commissioner, President of the First National Bank in Concord, President of Rumford Printing Company, and President of the New Hampshire Bankers Association.

William H. Barry, Sr (March 12, 1878 - March 17, 1958)

William H. Barry, Sr. was born in Nashua, New Hampshire, to Patrick and Honor Barry. He attended Nashua High School and went on to Holy Cross College, graduating in 1898. Mr. Barry attended Harvard University Law School where he received the degree of LL.B. in 1901.<sup>cviii</sup>

William Barry served as Nashua City Solicitor from 1907 until 1909, and Mayor from 1911 until 1915. He was elected to the New Hampshire House of Representatives in 1923 and to the State Senate in 1931. From 1933 until 1945, Mr. Barry served on the New Hampshire Public Service Commission. In 1945 he was appointed Clerk of the United States District Court, holding that office until 1957.<sup>cix</sup>

Charles M. Sawyer (February 2, 1906 - February 17, 1982)

Charles Murray Sawyer was born in Concord, the son of a New Hampshire State Superior Court Judge. Sawyer graduated from Concord High School in 1924 and from the University of New Hampshire in 1928.<sup>cx</sup> He received the degree of LL.B. from Boston University Law School in 1931 and was admitted to the New Hampshire Bar shortly thereafter.<sup>cxii</sup>

Mr. Sawyer practiced law in Lebanon until 1935. He was then appointed Clerk of Grafton County Superior Court.<sup>cxiii</sup> After his resignation in 1947, he once again entered private practice, this time in Concord, New Hampshire.<sup>cxiii</sup> Shortly afterwards, he accepted the position of Clerk of Concord Municipal Court, a post he held for six years.<sup>cxiv</sup>

Mr. Sawyer first joined the United States District Court as Deputy Clerk, succeeding Mr. William H. Barry, Sr. as Clerk in March 1957.<sup>cxv</sup> After retiring from the United States District Court in 1966, Mr. Sawyer worked for New Hampshire Legal Assistance until 1974.

Elizabeth M. Hoyt<sup>cxvi</sup> (October 24, 1910)

Elizabeth Hoyt was the first woman ever to be appointed the Clerk of a Court in New Hampshire. Mrs. Hoyt graduated from Concord High School in 1927 and later completed a two-year secretarial course at Boston University. She graduated with a degree in Practical Arts and Letters in 1930. Mrs. Hoyt began working shortly thereafter as a Clerical Assistant at the United States District Court.

Mrs. Hoyt was promoted to Deputy Clerk in 1941, and then to Chief Deputy Clerk in 1954, and upon Charles M. Sawyer's resignation, to Clerk in 1966.

Since retiring from the Court, she has been very active in community service, including the Red Cross and the South Congregational Church. Mrs. Hoyt resides in Concord, New Hampshire, with her husband Richmond.

William H. Barry, Jr.<sup>cxvii</sup> (February 3, 1930)

William Henry Barry, Jr., was born in Nashua to the former Clerk of the United States District Court, William Henry Barry, Sr. and his wife Mabel. William Barry, Jr. graduated from Holy Cross College in 1956 and received the degree of LL.B. in 1961 from Suffolk University. After graduating, he entered private legal practice.

In 1965, Mr. Barry became Regional Counsel for the Small Business Administration, and the following year he was appointed Assistant United States Attorney. Mr. Barry held that appointment until 1969, when he was appointed Clerk of the United States District Court. After serving as part-time magistrate and clerk, he resigned his clerkship in 1984 to become the first full-time United States Magistrate for New Hampshire, the position he currently holds.

Magistrate Barry is a member of the New Hampshire Bar Association's Committee on Cooperation with Courts and a part-time faculty member at Rivier College. He lives with his wife Nancy in Nashua; they have three children -- William III, Julie, and Maura.

Kathleen Northrup<sup>cxviii</sup> (February 11, 1947)

Kathleen Northrup was born in Manchester, New Hampshire, the daughter of William and Anna Northrup. Ms. Northrup graduated from Manchester Central High School in 1965.

After graduating, she took a job with the Small Business Administration which she held until 1971. Ms. Northrup left to become Courtroom Deputy to Judge Bownes in the United States District Court. She assumed the duties of Clerk of the Court on an interim basis after Mr. Barry's (Jr.) resignation, holding the position for seven months. After her brief tenure as Clerk, Ms. Northrup resumed her duties as Courtroom Deputy. The position of Chief Deputy was reinstated in June 1989 for the first time since 1966, and Ms. Northrup was promoted to that position.

James R. Starr<sup>cxix</sup> (May 25, 1951)

James Ray Starr was born in Waterloo, Iowa. After graduating from high school in Des Moines, Mr. Starr received a Bachelor of Business Administration from the University of Iowa in 1973. On a two-year trip across the country he decided to move to the Northeast, and specifically to New Hampshire, after completing his legal education. Mr. Starr graduated from Drake University Law School with a J.D. in 1978.

Upon arriving in New Hampshire, he held the position of law clerk for the New Hampshire State Superior Court from 1978 through 1979. Mr. Starr was then appointed Deputy Clerk for the same court, a position he held until being appointed Clerk of Merrimack County Superior Court in 1983. In November of 1984, Mr. Starr was appointed Clerk of the United States District Court.

Daniel J. Lynch

Daniel J. Lynch was born in Lapeer, Michigan, the son of Edward and Joan Lynch, and attended Lapeer East High School. After high school, Lynch graduated, with honors, from Michigan State University, where he majored in Minority/Majority Relations through James Madison College. Upon graduation, Lynch attended Wayne State University Law School, where he graduated cum laude and was awarded membership into the Order of the Coif.

From 1988 to 1990, Lynch served as a law clerk in the United States District Court for the Eastern District of Michigan. He then practiced law as a commercial litigator in New Hampshire with the law firm of Sheehan, Phinney, Bass + Green, P.A. Lynch began his career in judicial administration in 1996, working for the State of New Hampshire Judicial Branch as Deputy Clerk

in Strafford and Merrimack Superior Courts. In 2002, Lynch accepted the position as Chief Deputy Clerk in the United States District Court for the District of New Hampshire. In January of 2010, he was appointed to the combined position of United States Magistrate Judge and Chief Deputy Clerk. He was selected as the Clerk of Court, and reappointed to a second term as a United States Magistrate Judge, in January of 2014. Lynch also currently works as an adjunct professor in the Michigan State University Judicial Administration Program, from which he previously graduated with a master's certificate in judicial administration.

## THE CIRCUIT COURTS OF APPEAL

The Circuit Courts of Appeal were created by the Evarts Act of 1891. When created, they were almost exclusively appellate courts. Each bench was to consist of one circuit court judge, one circuit court of appeals judge, one district court judge, and a Supreme Court justice, with only two judges needed for a quorum. This system was designed to assist the Supreme Court with its backlog, and much of the Supreme Court's caseload was shifted to the circuit courts of appeal. However, the circuit courts of appeal only took over certain types of appeals, all others were still appealed directly to the Supreme court.

These provisions underwent alterations throughout the twentieth century. In 1911 Congress passed a Judicial Code which abolished the circuit courts by merging them with the district courts and increased the jurisdiction of the circuit courts of appeal. The Judges Bill of 1925 again increased the jurisdiction of the circuit courts of appeal and gave the Supreme Court the right of declination<sup>7</sup>. As a result, only a very limited class of cases from the district courts were granted direct appeal to the Supreme Court, and the circuit courts of appeal was frequently the last recourse for cases on appeal. The name "Circuit Court of Appeals" was changed to "Court of Appeals" by the Judicial Code of 1948. Today the courts of appeal have original jurisdiction to review and enforce the orders of many federal administrative agencies in addition to its appellate jurisdiction. The decisions of the courts of appeal may be reviewed by the Supreme Court through a *writ of certiori*. However, for particularly noteworthy cases, the Supreme Court may grant certiori before the court of appeals has rendered its final decision.

Unlike the Supreme Court, the court of appeals must hear all appeals brought before it. Most of the cases reviewed originate in the federal district courts. Robert Carp and Ronald Stidham have analyzed those appeals and divided them into five categories or types.

1. Ritualistic appeals - petitions that are expected or demanded even though the odds of winning are very low.
2. Frivolous appeals - cases and claims that have no substance and little or no chance for success. Many of these appeals come from prisoners who have everything to gain and nothing to lose.

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<sup>7</sup> Before 1925 the Supreme Court was required to hear every case appealed to it. The right of declination gave the Court the right to refuse to hear a case. This ended the major source of backlog.

3. Bureaucratic appeals - challenges of federal agencies and commissions and their decisions.

4. Consensual appeals - cases in which there is substantial agreement as to how the issue should be resolved...the litigants seek modifications of the lower-court monetary awards. Such appeals include income tax, corporate activity, and eminent domain cases.

5. Nonconsensual appeals - cases that raise major questions of public policy and evoke strong disagreement. Decisions by the courts of appeals are likely to establish policy for society as a whole, not just for the specific litigants.

The main purpose of review in the Courts of Appeals is error correction. Judges are called upon to monitor the performance of federal district courts and federal agencies and to supervise their application and interpretation of national and state laws. In doing so, the courts of appeals do not seek out new factual evidence, but instead examine the record of the lower court for errors.<sup>xxx</sup>

In the process of reviewing these numerous cases, the Court of Appeals judges investigate legal issues that may be considered worthy of review by the Supreme Court in future. The opinions of the Court of Appeals judges may alter the focus of the case sufficiently to change it from a routine case to one with constitutional or political significance, the types of causes in which the Supreme Court has the most interest.

There are several methods employed by the Court of Appeals to review a case. The first step in the review process is screening the appeals. Through screening, the judge decides whether to grant the case opportunity for oral argument or dispose of it in some other way. Court personnel, generally law clerks or staff attorneys, perform the screening. They read petitions and briefs and submit their recommendations to the judges. This process eliminates more than half of the cases, a decision is reached without resorting to any oral argument. The cases which are granted a full treatment are scheduled for oral argument and brought up before a panel of three judges. The attorneys for each side are given a short amount of time to discuss the points made in their written briefs and to answer questions from the judges. The judges confer and render their decision, occasionally accompanying the decision with a written opinion. If, within a circuit, two similar cases have been decided differently by two different panels, the court may utilize an *en banc* procedure to resolve the conflict; all the court of appeal judges of that circuit sit on a panel

together and decide the case. The *en banc* procedure may also be used in cases of extreme importance, or when the litigants request it, although the court may deny such a request.<sup>cxxi</sup>

One of the most important events to modern judiciary took place on September 14, 1922 when Congress passed an Act to create a Conference of the Senior Circuit Judges of the United States, which later came to be known as the Judicial Conference of the United States. This conference was to take place in Washington at least once each year to discuss issues in the federal courts and consider solutions to any problems faced by the courts. An Act in 1937 required the conference to "advise as to any matters in respect of which the administration of justice in the courts of the United States may be improved."<sup>cxxii</sup>

The result of these two Acts of Congress and the meetings of the conference was the Administrative Office Act of 1939. This act made the judiciary financially independent, unified its administration, and provided a mechanism for self-regulation. The Act did this by setting up an Administrative Office for the judiciary whose purpose is "to prepare the budget, to gather statistics as to the functioning of the courts, to disburse funds, provide equipment and accommodations, audit vouchers, and generally to handle the business necessary to the operation of the judicial machinery."<sup>cxxiii</sup> The Administrative Office is under the supervision of the Judicial Conference of the United States. The budget the Administrative Office prepares is considered by the Conference, and, if passed, is submitted for Congressional approval without revision.

In addition to setting up the Administrative Office, the Act also sets up a Judicial Council for each circuit composed of all the circuit and district judges of that circuit. The Judicial Council is responsible for overseeing the administration within its circuit and ensuring that new regulations are implemented. The Judicial Councils hold annual conferences to discuss success, failure and possible improvement in their administration of justice.

Judge John Parker wrote, on the effectiveness of this new system, The fourteen years which have passed since the enactment of the Administrative Office Act have witnessed great improvement in the federal judicial system as a result of the improved machinery for exploring the problems presented in the administration of justice and of the opportunity given to the judges to advise Congress with respect thereto. The conference aided by the Circuit Conferences and Councils and by committees appointed by the Conference itself, composed very largely of District Judges, has given careful consideration to such matters as

the adoption amendment of the Federal Civil and Criminal Rules, the setting up of a promotional policy for judicial employees, the prescribing of standards for probation officers, and the supervision of the practices of referees in bankruptcy. It has sponsored important measures which have been enacted into law such as the bill creating the Administrative Office, the bill abolishing the antiquated fee system in bankruptcy and provided fixed salaries for referees, and the bill providing a system of salaried court reporters for the trial courts. It now meets twice each year at the call of the Chief Justice of the United States, and at these semiannual sessions gives consideration to problems which have arisen affecting the administration of justice. Its advice is ordinarily asked by the committees of Congress as to any proposed legislation affecting the judiciary.<sup>cxxiv</sup>

The Court of Appeals for the First Circuit includes the districts of Maine, New Hampshire, Massachusetts, Rhode Island, and Puerto Rico and is allotted seven judges. The headquarters of the First Circuit are in Boston, Massachusetts.

#### First Circuit Court of Appeals Judges

<u>Judges</u>	<u>Term of Service</u>
Colt, LeBaron B	Jul 05, 1884 - Feb 07, 1913
Putnam, William L.	Mar 18, 1892 - Sep 17, 1917
Lowell, Francis C.	Feb 23, 1905 - Mar 06, 1911
Schofield, William	Jun 06, 1911 - Jun 10, 1912
Dodge, Frederick	Jul 23, 1912 - Jun 30, 1918
Bingham, George H.	Jun 15, 1913 - Mar 23, 1939
Johnson, Charles F.	Oct 01, 1917 - Apr 30, 1929
Anderson, George W.	Oct 24, 1918 - Sep 30, 1931
Wilson, Scott	Oct 02, 1929 - Mar 29, 1940
Morton, James M., Jr.	Jan 09, 1932 - Sep 30, 1939
Magruder, Calvert	Jun 13, 1939 - ?
Mahoney, John C.	Feb 12, 1940 - Dec 18, 1950
Woodbury, Peter	Feb 25, 1941 - ?
Hartigan, John Patrick	Jan 12, 1951 - ?

Bownes, Hugh H.

Oct 31, 1977 - Present

Souter, David H.

May 25, 1990 - Oct 08, 1990

## THE BANKRUPTCY COURT

In Colonial times, if a man defaulted on a loan he was placed in debtor's prison until he paid his creditors what he owed.<sup>cxxv</sup> In New Hampshire, the attitudes of the people did not dictate leniency for debtors. New Hampshire was an agricultural state full of rugged individualists who subscribed to a work ethic of self-sufficiency. They believed that if a man worked hard and spent wisely, he would never need to borrow or be in debt. Conversely, if a man was in debt, he was lazy and a spendthrift and deserved what he got.

A Bankruptcy Bill was passed by Congress in 1798. It required all states to recognize bankruptcy, a situation in which a debtor, be it an individual or an organization, is unable or unwilling to pay debts as they come due. The creditor or debtor seeks aid from the government or court in order to settle the debts. However, the Act did not dictate how each state should handle bankruptcy. Many states chose not to enact laws to administrate in bankruptcy cases, and the Act was repealed in 1803.<sup>cxxvi</sup>

There were many conflicts throughout the nineteenth century regarding the development of bankruptcy laws. Agricultural states felt that bankruptcy was an illegitimate way to discharge debts. As William Gordon, a New Hampshire opponent to bankruptcy legislation, pointed out, "farmers and country traders will suffer by such an act. Farmers and planters do business on credit, make payments when their crops come in, and frequently are late in payment; and thus the country trader with whom they deal may fail to pay the city merchant promptly, and if the latter proceeds in bankruptcy against the country trader he in turn must press his farmer or planter debtor, with some compulsory process."<sup>cxxvii</sup> Industrial states, on the other hand, needed bankruptcy in order to maintain the rapid rate of development in industry. The industrialized states had a growing class of merchants and traders who experienced booms and busts in fortune. Wealth was rapidly changing hands, and these entrepreneurs felt that bankruptcy was a far more effective means of settling debt than the archaic practice of debtor's prison.

Many states, most notably the industrial ones such as New York and Massachusetts, attempted to enact bankruptcy laws. These laws invariably failed due to poor drafting or conflicts with the laws of other states.<sup>cxxviii</sup> Interstate commerce made a uniform bankruptcy system essential for any system of bankruptcy to succeed. In New Hampshire, a system of bankruptcy was very slow to develop. By the mid-1800's New Hampshire had started to industrialize. As a

result, advocates of bankruptcy legislation began to appear, but they were too few in number. The majority of the state still felt that it was not a legitimate way to discharge debts. This hesitancy is visible in the maintenance of debtor's prison as punishment for debt as late as 1840. New Hampshire was one of the last states to repeal the debtor's prison laws.<sup>cxxxix</sup> In fact, it has been said that "at no time before 1900 could it be said that New Hampshire followed an innovative course in debtor-creditor relations. As both colony and state it moved with glacial slowness to relieve debtors."<sup>cxxx</sup>

Congress was often hesitant to take a stand on bankruptcy. When legislation was enacted, it was generally in response to a financial crisis. The Depression of 1820-1821 created a call for legislation, but it took the panic of 1837 followed by another depression to yield the comprehensive Bankruptcy Act of 1841. This Act was strongly advocated by New Hampshire's Daniel Webster, who said that "the Constitution requires us to establish uniform laws on the subject of bankruptcy, if we establish any."<sup>cxxxix</sup> Webster introduced the concept of voluntary bankruptcy. Until then all bankruptcy had been compulsory, the creditor sought action requiring the debtor to go bankrupt and settle his debts. In voluntary bankruptcy, the debtor seeks relief from his creditors. Voluntary bankruptcy gives the debtor more rights and lessens the power held by the creditor.<sup>cxxxii</sup> Webster also felt that any limitation on bankruptcy legislation would create a law that did not adequately serve the needs of a varied nation.<sup>cxxxiii</sup> The Bankruptcy Act of 1841 was repealed in 1842, largely due to pressure from creditor states that criticized voluntary bankruptcy.<sup>cxxxiv</sup>

Congress continued with its reactionary legislation for several more years. The Civil War and the Panic of 1857 resulted in the Bankruptcy Act of 1867. This was the first bankruptcy legislation that recognized the nation as an economic unit.<sup>cxxxv</sup> This Act received criticism because it was difficult to administer and it created an unfair balance between the rights of debtors and of creditors.<sup>cxxxvi</sup> It was repealed shortly after being enacted. The Panic of 1893 resulted in the Bankruptcy Code of 1898. This Act included both voluntary and compulsory bankruptcy, it established strict guidelines for its administration, it placed bankruptcy under the jurisdiction of the Federal District Court, and it legislated for the appointment of referees with specialized knowledge to adjudicate all bankruptcy proceedings. The referees were part-time employees of the court and performed the same function as a judge, the only difference being that referees were

more involved in cases. This Act proved to be enduring. It received some revision in the 1930's after the Great Depression, but was virtually unchanged for nearly a century.

The people of New Hampshire retained their hesitancy toward bankruptcy. The number of bankruptcy cases were so few that they were handled by the residing district judge. In the 1940's New Hampshire courts handled an average of four cases per year.<sup>cxxxvii</sup> No bankruptcy referee was appointed until 1945, when Joseph J. Betley was given the position.

Referee Betley operated the Bankruptcy Court for the District of New Hampshire out of his own law office on Elm Street in Manchester. He prided himself on having the smallest and most cost efficient bankruptcy court in the nation. With the help of his able assistant/secretary Ruth Alter, Betley disposed of thousands of bankruptcy cases without leaving his small office. If a courtroom was needed, Referee Betley used the Probate Court down the street.<sup>cxxxviii</sup>

Referee Betley ran a very efficient courtroom; delays were not tolerated, and cases were handled with vigor.<sup>cxxxix</sup> The caseload he handled was small until the advent of consumer credit in the 1950's resulted in an increase in personal bankruptcies. In the 1960's New Hampshire's shoe and textile industries were forced into bankruptcy court by overseas competitors who undercut labor costs and prices. The recession in the 1970's caused another leap in number of personal bankruptcies filed.<sup>cxl</sup>

In 1978 Congress passed a new Bankruptcy Code. This Code was meant to reorganize the bankruptcy system and make it more efficient so that it could handle the astronomical increases in bankruptcy filings. The Bankruptcy Court became a full adjunct of the Federal District Court, and the Bankruptcy Referees became Bankruptcy Judges appointed to a fourteen-year renewable term, instead of the life term of other federal judges.<sup>cxli</sup> Referee Betley was appointed the first judge of the Bankruptcy Court for the District of New Hampshire.

The Bankruptcy Code of 1978 called for a full-time Clerk of Court, so Judge Betley hired Timothy P. Smith. The additional staff was greatly needed to handle the 20-30% annual increase in caseload. Under this new Code the judge became less involved in the day to day operation of a case; the routine responsibilities for bankruptcy procedures were shifted to the judge's support staff and the judge was only called upon if the proposed settlement was contested by the parties involved.<sup>cxlii</sup>

In the summer of 1983 the Bankruptcy Court for the District of New Hampshire moved to the federal building on Chestnut Street in Manchester and became a full-time, self-sufficient

facility. Unfortunately, Judge Joseph Betley only sat in his new chambers on Chestnut Street for one day, he died on August 22, 1983.<sup>cxliii</sup> Federal bankruptcy judges from Maine and Massachusetts served in the new facilities until a new judge was appointed. In December of 1983, James E. Yacos was appointed to fill Judge Betley's position.

Throughout his time on the bench Judge Yacos worked to extensively streamline the procedure for filing bankruptcy. As a result today's cases move through his court rapidly and efficiently. This achievement gains greater merit when the situation under which he was working is known. When Judge Yacos ascended to the bench in 1983 the court handled approximately 500 cases per year. Today that average is up to 4000 cases per year.<sup>cxliv</sup> This tremendous increase is attributed to the simultaneous collapse of the northern New England real estate market and the Massachusetts computer industry.<sup>cxlv</sup>

In 1987 George Vannah became Clerk of the Bankruptcy Court. Mr. Vannah and his support staff, with the assistance of Federal Bankruptcy Trustees, dispose of a majority of the bankruptcy cases. This team has essentially taken over the non-judicial responsibilities of the old bankruptcy referees. The number of cases that are contested and go in front of the judge remains relatively small. The cases that do go to court are most often commercial bankruptcies which contain long lists of creditors and debtors, all of whom demand satisfaction.

Today's bankruptcy court is very different from Judge Betley's court of just a few years ago. What used to be a part-time court operated out of Betley's law office has grown into an institution with over 25 employees handling thousands of cases each year. The Federal Bankruptcy Court for the District of New Hampshire continues to expand. The court has plans to move to larger facilities within its present building by 1992 and hopes to join the Federal District Court in a new facility in Concord before the turn of the century.

### Joseph Betley

Joseph Betley was born in Manchester on October 19, 1910. He attended Central High School and completed his undergraduate and legal studies at Catholic University in Washington D.C. After a short time working for the federal government, Joe Betley returned to Manchester in 1936 and joined the Bar Association. After serving as a State Representative, Betley, in 1944, ran for United States Senator. He lost by little more than 4000 votes.<sup>cxlvi</sup> After his foray into

politics, Joe Betley decided to open his own law office and, in 1945, he was appointed Bankruptcy Referee for the District of New Hampshire by District Judge Aloysius J. Connor.

On August 22, 1983, Judge Betley died. He was 72 years old and had served as head of the of the Bankruptcy Court for the District of New Hampshire for 37 years.<sup>cxlvii</sup> In 1981 Attorney Kenneth Graf stated "There is only one Joe Betley. The mold in which he was cast is unique and for those of you who have not been before him or associated or negotiated with him, you have missed something that does not often occur in the normal practice of the law today."<sup>cxlviii</sup>

### James E. Yacos

James Yacos was born in Portage, Pennsylvania. He did his undergraduate work at the University of Pennsylvania and obtained his law degree from Harvard Law School. Yacos was the Bankruptcy Judge in Miami, Florida from 1965 to 1975. He left the bench to enter private practice. In 1980 he moved to Hanover, New Hampshire, established a law office, and started a quarterly legal newsletter on bankruptcy called "The Broken Bench Review".<sup>cxlix</sup> ("Bankruptcy derives from the Italian *banca rotta*, or "broken bench", a term that originated because early merchants and moneylenders operated from marketplace benches."<sup>cl</sup>) Yacos was a part-time judge until 1985, when the work load became great enough to require that he work full-time.<sup>cli</sup>

### J. Michael Deasy

U.S. Bankruptcy Judge for the District of New Hampshire and a member of the Bankruptcy Appellate Panel for the First Circuit. Prior to his appointment to the bench in March 1999, Judge Deasy practiced bankruptcy, commercial and environmental law for 26 years. Judge Deasy retired on March 10, 2013 and is currently serving as a recalled bankruptcy judge for the District of New Hampshire.

He is a graduate of Rensselaer Polytechnic Institute (B.S. 1967) and Boston College Law School (J.D. 1973, cum laude), where he was elected to the Order of the Coif and was an editor of the Annual Survey of Massachusetts Law. He also served in the U.S. Navy as a submarine officer (1967-70). He is a fellow of the American College of Bankruptcy and a member of American Bankruptcy Institute, the National Conference of Bankruptcy Judges and the New Hampshire Bar Association.

Judge Deasy is also a member of the Portland, Maine/Arkhangelsk sister city committee and he has traveled to Arkhangelsk, Russia as a member of rule of law delegations for programs in commercial law, bankruptcy, legal process and local governance involving Arbitrage Court and Oblast Court judges, regional Duma members, local officials and law students. He has also participated in many programs for Russian judges and court administrators visiting the United States through the Open World program and other organizations.

#### Bruce A. Harwood

Chief U.S. Bankruptcy Judge for the District of New Hampshire, appointed to the bench in March, 2013. Prior to his appointment, he chaired the Bankruptcy, Insolvency and Creditors' Rights Group at Sheehan Phinney Bass + Green in Manchester, N.H., representing business debtors, asset purchasers, secured and unsecured creditors, creditors' committees, trustees in bankruptcy and insurance and banking regulators in connection with the rehabilitation and liquidation of insolvent insurers and trust companies. He was a chapter 7 panel trustee in the District of New Hampshire, and mediated disputes arising in debtor/creditor relations. Judge Harwood serves on American Bankruptcy Institute's Board of Directors (Communication, Information and Technology Committee). He previously served as Co-Chair of the ABI's Commercial Fraud Committee; as program Co-Chair of ABI's Northeast Bankruptcy Conference; and as Northeast Regional Chair of the ABI Endowment Fund's Development Committee. He also served on the ABI's Civility Task Force. He is a Fellow in the American College of Bankruptcy, and was consistently recognized in the bankruptcy law section of the Best Lawyers in America, in New England SuperLawyers, and by Chambers USA. Judge Harwood received his B.A. from Northwestern University, and his J.D. from Washington University School of Law.

#### A Case of Judge Yacos

One of the most noteworthy cases in the history of the New Hampshire Bankruptcy Court is the bankruptcy of the Public Service of New Hampshire utility company (PSNH). PSNH filed for bankruptcy in January 1988, it was the first bankruptcy of a utility in the modern era, and one of the largest bankruptcies the nation has ever seen.<sup>clii</sup> The case required months of court time and took years to decide. Judge Yacos established many significant precedents in dealing with the massive PSNH case that other bankruptcy courts now use when they are presented with a case of

this magnitude.<sup>cliii</sup> His most notable decision regarded PSNH's attempts to get a rate increase that were denied by state energy commissions. The utility needed the rate increase in order to pay its creditors. Judge Yacos stated that bankruptcy law takes precedence over state regulatory law, so PSNH could have its rate increase under the regulation of a federal agency.<sup>cliv</sup> PSNH emerged from bankruptcy in May 1991, under the ownership of Northeast Utilities.

## **MAGISTRATE JUDGES OF THE DISTRICT COURT**

The office of United States Magistrate was created in response to the tremendous work load of the federal court system. During the past fifty years, the dramatic increase in the volume of litigation in America has overburdened the courts. The Federal Magistrates Act of 1968 was an attempt to relieve that burden. The Act abolished the office of United States Commissioner, replacing it with the broader and more powerful office of United States Magistrate, empowered to dispose of a greater range of minor offenses than had been the Commissioners.

The United States Magistrate is a public civil officer in the United States District Court, playing a very similar role to that of a Justice of the Peace in local courts throughout the country. The Magistrate's duties vary from district to district depending on the particular needs of each court, but his or her responsibility always includes handling many of the routine judicial matters which would otherwise fill the dockets of the federal judges. In this sense, the Magistrate and the Clerk work as a team to maintain a judicial system that runs efficiently.

The position of United States Magistrate was created in 1968. However, New Hampshire did not have a magistrate until 1970 when Mr. William H. Barry, Jr. took the position part-time, acting as both Clerk of the New Hampshire Federal District Court and magistrate. He became full-time magistrate and resigned as clerk in 1984. He retains that position today. Magistrate Barry is the district's only magistrate and handles all civil preliminary pretrial hearings, civil discovery motions, the majority of prisoner litigation, most dispositive motions, and preliminary matters in criminal cases. On December 1, 1990, by an Act of Congress, the title Magistrate was changed to Magistrate Judge, 28 USC 633.

William H. Barry  
(1984 - 1995)



William H. Barry Jr. was born in Nashua, New Hampshire on February 3, 1920, and lived there his entire life.

He graduated from Nashua Senior High School in 1947 and received an AB in sociology from the College of the Holy Cross in Worcester, Mass., in 1956. He graduated from Suffolk Law School in 1961.

He served in the army during the Korean conflict and was awarded the Purple Heart, the Korean Service Medal with two bronze stars and the United Nations Service Medal.

He was married to Nancy (Collins) Barry and together they had three children. Barry practiced law in Nashua and became Clerk of the U.S. District Court in Concord in 1969, a job he held until 1984. He was appointed Magistrate Judge in 1984 and retired from the federal bench in 1995. Following his retirement, he practiced law with his son, William Barry III. He was a lifelong Democrat and a delegate to the 1964 Democratic National Convention. He was the Democratic nominee for Congress in 1966. He enjoyed fishing, golfing, and camping.

James R. Muirhead  
(1995 - 2010)



Magistrate Judge Muirhead attended Cornell University, where he received a B.A. in 1963, and Cornell University Law School, where he received a LL.B. in 1966. He had twenty-nine years of trial experience in complex litigation prior to becoming a Magistrate Judge on September 1, 1995, including all types of commercial and business disputes, product liability, aviation accidents, negligence and various types of wrongful death cases. He represented plaintiffs and defendants. His practice in the commercial and business disputes area included the resolution of such disputes through alternative dispute procedures such as arbitration and mediation. His trial experience included in excess of one hundred jury trials.

He is a fellow of the International Society of Barristers and is a fellow of the American College of Trial Lawyers. He served as a Trustee of Franklin Pierce Law School, as president of the Board of New Hampshire Legal Assistance, as a member of the New Hampshire Bar Foundation, a member of the Board of Governors of the New Hampshire Bar Association for nine

years, Chairman of the Continuing Legal Education Committee and as a member of several other Bar committees; and served on the New Hampshire Supreme Court's Task Force on the Courts from 1989 to 1990. He served as a director of the Greater Manchester Development Corporation and was Chairman of the Chamber of Commerce Task Force to study city government organization and operations.

He was appointed Magistrate Judge on September 1, 1995, reappointed September 1, 2003, and retired from the federal bench in 2010.

Daniel J. Lynch  
(2010 - 2023)

Daniel J. Lynch was born in Lapeer, Michigan, the son of Edward and Joan Lynch, and attended Lapeer East High School. After high school, Lynch graduated, with honors, from Michigan State University, where he majored in Minority/Majority Relations through James Madison College. Upon graduation, Lynch attended Wayne State University Law School, where he graduated cum laude and was awarded membership into the Order of the Coif.

From 1988 to 1990, Lynch served as a law clerk in the United States District Court for the Eastern District of Michigan. He then practiced law as a commercial litigator in New Hampshire with the law firm of Sheehan, Phinney, Bass + Green, P.A. Lynch began his career in judicial administration in 1996, working for the State of New Hampshire Judicial Branch as Deputy Clerk in Strafford and Merrimack Superior Courts. In 2002, Lynch accepted the position as Chief Deputy Clerk in the United States District Court for the District of New Hampshire. In January of 2010, he was appointed to the combined position of United States Magistrate Judge and Chief Deputy Clerk. He was selected as the Clerk of Court in 2014 and was reappointed four times as a United States Magistrate Judge. Lynch also was an adjunct professor in the Michigan State University Judicial Administration Program, from which he previously graduated with a master's certificate in judicial administration.

Landya Boyer McCafferty  
(2010 - 2013)

Andrea K. Johnstone  
(2014 – present)

Talesha L. Saint-Marc  
(2023 – present)

## OFFICE OF THE UNITED STATES ATTORNEY

Like the district and circuit court system, the Office of United States Attorney was created with the passage of the Judiciary Act of 1789; and, like the court system, it was a product of the "federal issue."

Under the Judiciary Act, the United States Attorneys were limited to handling legal matters for the federal government within their own districts, while the Attorney General handled only the litigation which went to the Supreme Court. The Attorney General was primarily counsellor to the President and department heads. Therefore, individual District Attorneys (United States Attorneys) were autonomous but isolated. This was a deliberate move by Congress and can be seen as part of the compromise that the Federalists and the Anti-federalists were trying to forge.

United States Attorneys were paid by a system of fees based upon the types of legal services rendered, sums of money from which they also had to deduct the expenses of their staffs and offices. As may be imagined, it was difficult to find worthy candidates for these positions in this climate. President George Washington was forced to promote the office on the basis of prestige alone. The United States Attorneys and the Attorney General had to be allowed to retain their private practices in order to make ends meet.

The forced separation between the District Attorneys and the Attorney General created many problems in coordination and administration. The first Attorney General, Edmund Randolph, attempted to reform this system almost immediately upon taking office. His efforts, and the efforts of the other would-be reformers (which included every Attorney General ever to be appointed,) were unsuccessful and the system remained unchanged until 1861. The opposition from men such as Daniel Webster was too strong.

This opposition was finally overcome by increasingly burdensome administrative problems within the nation's legal system. In 1861 Congress directed the Attorney General to supervise the United States Attorneys. In 1870 the Department of Justice was created. It is a large law firm which unified the national legal agencies, including the US Attorneys, under the Attorney General. In 1896 the fee system of pay was replaced by a fixed salary schedule dependent upon caseload. Also in 1896, the paying of expenses and the appointment of Assistant United States Attorneys were permitted. All laws regarding the office of United States Attorney

were finally collected and codified in 1966, under Title 28 of the United States Code Sections 541-550, establishing the rules which still govern that office today.

The United States Attorneys now work exclusively for the government of the United States and live in the district for which they are appointed. The US Attorneys handle all litigation concerning the United States at the district and appellate court levels. The US Attorney's Office for the District of New Hampshire consists of the United States Attorney and fifteen Assistant United States Attorneys working in three areas of law: Administrative, Criminal, and Civil.

#### Attorneys for the District of New Hampshire

1. Samuel Sherburne, Jr. (1789-1794)
2. Edward St. Loe Livermore (1794-1797)
3. Jeremiah Smith (1797-1801)
4. Edward St. Loe Livermore (1801)
5. John S. Sherburn (1801-1804)
6. Jonathan Steele (1804)
7. Daniel Humphreys (1804-1827)
8. William Plumer, Jr. (1827-1828)
9. Daniel M. Christie (1828-1829)
10. Samuel Cushman (1829-1830)
11. Daniel M. Durell (1830-1834)
12. John P. Hale (1834-1841)
13. Joel Eastman (1841-1845)
14. Franklin Pierce (1845-1847)
15. Josiah Minot (1847-1850)
16. William W. Stickney (1850-1853)
17. John H. George (1853-1858)
18. Anson S. Marshall (1858-1861)
19. Charles W. Rand (1861-1871)
20. Henry P. Rolfe (1871-1874)
21. Joshua G. Hall (1874-1879)

22. Ossian Ray (1879-1881)
23. Charles H. Burns (1881-1885)
24. John S.H. Frink (1885-1890)
25. James W. Remick (1890-1894)
26. Oliver E. Branch (1894-1898)
27. Charles J. Hamblett (1898-1907)
28. Charles W. Hoitt (1907-1914)
29. Fred H. Brown (1914-1922)
30. Raymond V. Smith (1922-1934)
31. Alexander Murchie (1934-1944)
32. Dennis E. Sullivan (1945-1949)
33. Robert D. Branch (1949)
34. John J. Sheehan (1949-1954)
35. Maurice P. Bois (1954-1961)
36. William H. Craig (1961-1963)
37. John D. McCarthy (1963)
38. Louis M. Janelle (1963-1969)
39. David A. Brock (1969-1972)
40. William B. Cullimore (1972-1973)
41. Carroll F. Jones (1973)
42. William J. Deachman, III (1973-1977)
43. William A. Shaheen (1977-1981)
44. Robert J. Kennedy (1981)
45. W. Stephen Thayer, III (1981-1984)
46. Bruce E. Kenna (1984-1985)
47. Richard V. Wiebusch (1985-1988)
48. Peter E. Papps (1988-1989)
49. Jefferey R. Howard (1989-1992)
50. Peter E. Papps (1992-1993)
51. Paul M. Gagnon (1993-2001)
52. Gretchen Leah Witt (2001)
53. Thomas P. Colantuono (2001-2009)
54. John P. Kacavas (2009-Present)

## OFFICE OF THE UNITED STATES MARSHAL

The office of United States Marshal was established by the Judiciary Act of 1789. It was the civilian law enforcement arm of the federal government, and for more than a century, the only nationwide police service. Today, the marshals are thought of almost exclusively as federal court officers. This one aspect of their original mandate stands out as a result of the changes that have taken place in the marshals service over its 200-year history. Those changes took place in four distinct phases.

The first phase concerns the time from the service's inception in 1789 until the Civil War. These were the formative years of the service, when the marshals were asked to perform many varied duties. In addition to law enforcement and courtroom policing, the marshals were asked to handle the national census, the registration of aliens during wartime, the confinement of spies, and United States Customs. In large part, these wide-ranging tasks were the price the marshals had to pay for being the only specialized federal agents established without any restrictions. Marshals prided themselves on two things: the ability to take on any job and the ability to finish any job, often alone. Congress placed few checks upon these marshals beyond placing a time limit upon their office. Each marshal was appointed for a four-year, renewable term, serving at the President's pleasure.

The second phase took place from the Reconstruction until 1900. During this period, the marshals were asked to bring law and order to the American western frontier. It is from this time and place that the stories of United States Marshals, renowned for their heroism, wisdom, and fairness, come to us. In the south, the marshals implemented Reconstruction legislation and litigation. The marshals also rose as the chief adversaries of the moonshiners. The marshals often stood as the sole representatives of the federal government. They were charged with extending the government's authority and protection into local communities. President Washington began the practice of always choosing a well respected resident of each district to be the marshal. This was a way of bridging the gap between the local communities and the federal government. There was a negative side to being the most well-known local representative of the federal government of course. The marshals were frequently the target of dissatisfaction with the federal government's laws and policies. They were taken prisoner in rebellions and uprising such as the Whiskey Rebellion in the eighteenth century. In some instances the force of resistance was

the state government. Several marshals throughout history have been arrested by state authorities doing their duty. This form of resistance was used as recently as 1962 when Chief Marshal James J.P. McShane was indicted by the Mississippi courts for inciting a riot on the University of Mississippi-Oxford campus over the enrollment of James Meredith, a black student.

The third phase of the marshals service (1900-1965) was a time of great change. With the rise of the labor movement at the beginning of the century, the marshals were ordered to protect railroads and government properties, often from friends and peers. Throughout this period many specialized federal agencies were created. As the number of the marshals' duties diminished the government attempted to specialize the marshal's office as well. It is from this time that we can date the perception of the marshal as a courtroom functionary, a role that was in fundamental opposition to the character of both the service and the people who belonged to it.

The fourth phase of the marshals service continues today. In these years, the marshals service has begun to re-establish itself and regain lost credibility. The marshals played a prominent role outside the courtroom again, this time during the civil rights movement and peace movements in the late 1960's. They also helped to carry out federal desegregation rulings throughout the country.

The marshals' responsibilities in today's world are far-reaching. They are one of the most active federal agencies, and the least restricted. The marshals are the only generalized federal law enforcement agency. Unlike the many bureaus of the federal government, they are not limited to rigidly structured tasks. As a result, they can accommodate their activities to the changing needs of the federal government and courts. The marshals service has many responsibilities and it performs numerous duties to insure the safety and effectiveness of the federal court system. Among these services are the following: they provide security for the courts and court personnel, jurors and witnesses; they maintain custody and are responsible for the transportation to and from court of federal prisoners; they are responsible for the execution of warrants issued by the US courts, an activity which frequently requires that they conduct investigations to locate and arrest fugitives, including escaped federal prisoners, parole violators and persons wanted for bond default; the marshals service is also responsible for the Witness Protection Program which provides security for federal witnesses and relocates the witness and family if such is required for their safety. The United States Marshal for the District of New Hampshire is Mr. Robert F.

Gilbert. Marshal Gilbert heads an office which includes a Chief Deputy Marshal, five Deputy Marshals, and two support administrators.

U.S. Marshals for the District of New Hampshire

1. John Parker (1789-1791)
2. Nathaniel Roger (1791-1798)
3. Bradbury Cilley (1798-1802)
4. Michael McClary (1802-1824)
5. Pearson Cogswell (1824-1836)
6. Charles Lane (1836-1841)
7. Israel W. Kelley (1841-1845)
8. Cyrus Barton (1845-1850)
9. Samuel Garfield (1850-1853)
10. Samuel Swasey (1853)
11. Samuel Tilton (1853-1858)
12. Stephen W. Dearborn (1858-1861)
13. Josephy Gilman (1861)
14. Jacob H. Ela (1861-1866)
15. Jocab N. Patterson (1867-1886)
16. Fred A. Barker (1886-1890)
17. Adam T. Pierce (1890-1894)
18. Clark Campbell (1894-1899)
19. Eugene P. Nute (1899-1914)
20. Charles J. O'Neil (1914-1920)
21. William Murchie (1920)
22. Joseph E. LaChance (1920-1921)
23. Thomas B. Donnelly (1921-1923)
24. Perley B. Phillips (1923-1925)
25. Alfred J. Chretien (1925-1934)
26. John M. Guay (1934-1945)
27. Alphone Roy (1945-1953)
28. George A. Colbath (1953-1961)
29. Royal Dion (1961-1963)
30. Paul G. April (1963-1969)
31. Victor Cardosi (1969-1977)
32. Richard Brunelle (1977)
33. Robert E. Raiche (1977-1981)
34. Richard Brunelle (1981)

35. Ronald D. Daniels, Jr. (1981-1988)
36. Donald Waite (1988- ?)
37. Sydney A. Goldberg (?-1990)
38. Robert F. Gilbert (1990-?)

## **THE UNITED STATES PROBATION OFFICE**

### History of the National System

The federal probation system dates to 1925 when President Calvin Coolidge signed into law the Probation Act. Probation had its roots in the practice of judicial reprieve which was used in English courts to serve as a temporary suspension of sentence to allow a defendant to appeal to the Crown for a pardon. The first recognized probation officer in the United States was John Augustus, a volunteer who approached a Massachusetts local court to allow "drunkards" to be placed under his direction while on bail with an understanding that the case would be dismissed upon favorable treatment by Augustus. Although for nearly a century some federal judges had engaged in the practice of a form of probation by suspending sentences of certain defendants, this practice ended in 1916 when the Supreme Court ruled in *Ex parte United States*, 242 U.S. 27 that federal judges had no such legal authority. A major effort to enact legislation to establish a probation system, which interestingly had to overcome the opposition of many federal judges and the Department of Justice, ensued. At the time the Probation Act became law, thirty states and at least twelve countries had already established probation systems.

From the outset, federal probation officers were charged with the responsibility of conducting investigations of any case referred to them by the Court and supervising defendants placed on probation in the community. Originally under the auspices of the Attorney General, the federal probation system was administered by the director of the Bureau of Prisons. This remained so until 1940 when responsibility for the administration of the system was transferred to the Administrative Office of the U.S. Courts which had been established a year earlier. Commencing in 1930, federal probation officers assumed responsibility for supervision of federal parolees who were under the jurisdiction of the Department of Justice. In 1946, the federal probation system agreed to supervise military parolees who had been released from disciplinary barracks administered by the Army and Air Force. Most of the presentence investigations conducted during this period were for violations of the Volstead Act (prohibition of alcoholic beverages), Dyer Act (interstate transportation of stolen motor vehicles), and the White Slavery Act. From a total of eight probation officers nationwide in 1930, staff grew to 303 by 1950 and the supervision caseload to 30,087.

The years 1950 to 1975 represented the high water mark of the rehabilitation (or treatment) model in federal sentencing and probation supervision. In this connection, sentencing alternatives expanded with passage of the Youth Corrections Act in 1950 (related to the sentencing and supervision of defendants aged 18 to 26); the Indeterminate Sentencing Act of 1958 (relating to adult defendants); the Criminal Justice Act of 1964 and the Prisoner Rehabilitation Act of 1965 (which established home furloughs, work release programs and community treatment centers); and the Narcotic Addict Rehabilitation Act of 1966 (relating to drug treatment for addicted parolees). These years were also marked by an increased professionalization of the probation service in terms of higher qualifications for appointment, increased training programs under the newly established (in 1967) Federal Judicial Center, and higher standards for work performed. Staff grew to 1,148 and the supervision caseload to 59,534.

The years since 1975 have witnessed two major events for the system: the rehabilitation model in sentencing and supervision has been supplanted by the crime control model, and pretrial services was established as a major component of the federal probation system. With respect to the former, enactment of the Comprehensive Crime Control Act of 1984 (which included the Sentencing Reform Act of 1984) was the watershed event. It replaced indeterminate sentencing then in place with a determinate sentencing system and established the U.S. Sentencing Commission which was charged with the task of promulgating sentencing guidelines; it elevated probation to a sentence in and of itself, eliminated parole, and established supervised release as the new form of postconviction supervision; and, it reformed the "good time" provisions relating to service of prison sentences to a maximum of 54 days annually after completion of the first year of a sentence, thereby markedly increasing the percentage of a sentence which would actually be served in prison before release to the community. Another important event was the adoption of the Enhanced Supervision philosophy, concretized in a 1991 monograph Supervision of Federal Offenders, which focused on enforcement of court-imposed sanctions, risk control, and correctional treatment. These developments, together with major technological changes, spawned a variety of new officer specialties, including guidelines specialists, drug and alcohol treatment specialists, mental health treatment specialists, and electronic monitoring treatment specialists. A shifting prosecutorial emphasis on drug traffickers, generated in part by Congressional passage of mandatory minimum sentences for certain drug trafficking offenses in the late 1980s, has dramatically affected the composition of supervision caseloads to the point where approximately

40% are drug offenders. Moreover, whereas in 1975 more than two-thirds of those on supervision were probationers, today approximately 70% are supervised releasees.

With respect to the latter, following the pretrial services demonstration project of the 1970s, Congress enacted the Pretrial Services Act of 1982 which provided for the establishment of pretrial services in every district. The probation offices in small and medium sized districts most often absorbed the pretrial services function, while separate pretrial services offices were established in many larger districts. The basic pretrial services responsibilities are to conduct bail investigations for the court and to supervise those defendants placed on pretrial supervision by the court. The Bail Reform Act of 1984 was an important event for pretrial services in that it permitted the court to consider danger to the community in setting bail conditions and to deny bail altogether where a defendant posed a grave danger to others. The ensuing years have witnessed a professionalization of the pretrial services function, especially with respect to the establishment of standards in monographs for report writing and supervision efforts. Pretrial services has thus become an integral part of the U.S. Probation & Pretrial Services system.

#### History of U.S. Probation in the District of New Hampshire

Federal probation in the District of New Hampshire dates to 1933 when Brainard Jacobs was appointed the District's first probation officer. Although it would probably be denied by our sister northern New England districts, Mr. Jacobs was responsible in his early years of service for probation services in Maine and Vermont as well as New Hampshire. Staffing of one probation officer and one clerk held steady until 1974 when the Administrative Office authorized a second probation officer for the District. As late as 1980, staffing remained at this level. Since then, staffing in the District, like that in the nation as a whole, has grown exponentially to the present level of fourteen probation officers, six support staff, and two part-time workers. Since 1984 when the office absorbed the pretrial services function, the official name of the office has been the U.S. Probation & Pretrial Services Office for the District of New Hampshire. Currently, the District has approximately 225 offenders on postconviction supervision and approximately 50 defendants on pretrial supervision; during the most recent fiscal year, the District completed 131 presentence investigations and 167 bail investigations. Thomas K. Tarr has been chief probation officer since 1992.

## **COURTHOUSES OF THE UNITED STATES DISTRICT COURT**

The choice of sites for the United States District Court has been no simple matter. Convenience, activity, and accessibility have been just a few of the considerations in choosing a site for what may be the only federal court building in an entire state. When the federal government was looking around for locations in New Hampshire in 1789, Exeter and Portsmouth recommended themselves for those reasons. Portsmouth was a busy port with many shipbuilding yards and Exeter was the capital of New Hampshire during the Revolutionary War. During its first sixty years the district court alternated between the two towns, sitting in each four times a year.

In 1791, the town of Exeter completed work on a new court house to be used by the federal and local courts. It was a wooden building, standing at the widened end of Court Street, today called Front Street. The roadways which completely surrounded the courthouse led to complaints about the level of noise so the building was moved further west in 1834. Moving this large heavy building was not an easy task. It was accomplished by placing the building on rollers and using two long lines of oxen to pull it to its new location. In 1841 the building burned down due to an exhibition called the "Burning of Moscow". The fires used in this exhibition caused the fire which destroyed the building.

The citizens of Exeter appropriated three thousand five hundred dollars for a new building to serve as town hall and courthouse. It was constructed on the same site as the old wooden courthouse. Whether the district court ever met there is uncertain because the court moved to Concord at approximately the same time. The second courthouse in Exeter still stands and houses the Town Library.

At Portsmouth the district court met in the building we know today as the Old State House. Built in 1758, the Old State House used to be located on "the Parade," what is now Market Square. The Old State House has always held an important place in New Hampshire's history. It was the sight of demonstrations and protests throughout the eighteenth century. It was here that the Declaration of Independence and the Constitution were first read and ratified by New Hampshire's citizens, and it was at the Old State House that people gathered to hear news of victory in the Revolutionary War. The Old State House was also used as a place for celebration and as a reception area where legislators entertained such noteworthy guests as George Washington. The

building was removed in 1836. The small section of the building that survived has been painstakingly rebuilt from the few photographs available. This small portion of the Old State House has been moved to Strawberry Banke in Portsmouth and can be seen today on Court Street.

When the district court first began to meet in Concord, sometime around 1840, it used the county courthouse in the old Town Hall building. But with Concord's position as state capitol assured, a federal building was commissioned to house the district court, the circuit court, and the Post Office. The first federal building was completed in 1889. It was designed by federal architects Melville Bell and James Jill, designer of the United States Treasury building. The use of select Concord granite in the construction of this building reportedly convinced the federal government to use Concord granite for the Library of Congress.

The first federal building, located by New Hampshire's current State House, is now known as the Legislative Office Building. Rumor contends that the transfer from this first building was brought about in large part by Judge Charles E. Wyzanski. Judge Wyzanski, of the United States District Court for the District of Massachusetts, was sitting by designation in the old courthouse when he proclaimed that he would never again sit at the bench of the United States District Court in New Hampshire until a better and more pleasant courthouse was substituted or built.

Work began on the new federal building in Concord in January of 1965. Located on the corner of Pleasant and South Streets, the building was designed by John D. Detley and the firm of Koehler & Isaak. The district court moved there in September of 1967. Dedicated to a long-time New Hampshire Congressman, the James C. Cleveland Federal Building houses many federal agencies that serve New Hampshire. An annex to this building is in the planning stage right now. The annex is to be equal in size to the Cleveland Building and is scheduled to be completed by late 1995.

An additional courthouse for the Federal District Court for the District of New Hampshire was established in Littleton in 1892. The regular district judges would take turns, each serving a term in Littleton. Frequently a visiting judge was sent there to hold court. Littleton was a favorite of the judges, in part because it was located in a skiing area. In the early 1980's the federal government discontinued its use of the Littleton courthouse.

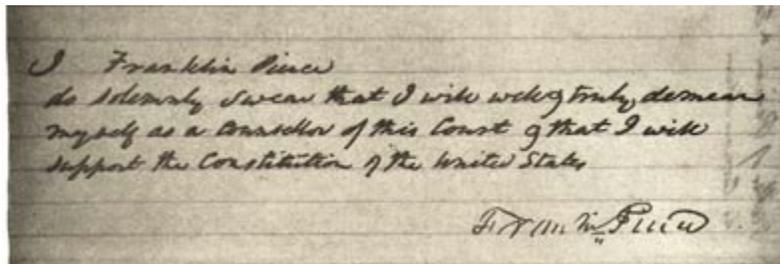
## A FEW NEW HAMPSHIRE NOTABLES

### Franklin Pierce<sup>clv</sup>

Franklin Pierce was born in Hillsborough on November 23, 1804, the son of a Revolutionary War veteran. Pierce graduated from Bowdoin College in 1824 and then studied under Levi Woodbury of Portsmouth and Edmund Parker of Amherst and at the Law School of Northampton, Massachusetts, before admission to the bar in 1827. He practiced law in Hillsborough and Concord.



His first case resulted in failure and this led him to declare, "I will try causes, and I will win them yet. The next case I have I will try, and if I lose it, the next after it, and so on as long as anyone will intrust me with their cases, if I lose them every one."<sup>clvi</sup> This led him to devote himself to the study of the skills necessary to successfully try cases. Pierce spent a great deal of time and energy improving his speaking voice and his style of presentation, honing the skills that would make him eloquent beyond compare.



Pierce was fond of using a tactic which is almost mandatory in the practice of law today. As Charles Bell recounts,

He believed that no person should be called to the stand to testify until his knowledge had been verified by personal examination by counsel, and he was in the habit of repeatedly putting his witnesses through their statements, until they were proof against attack or surprise.<sup>clvii</sup>

He was a practical trial lawyer, without ambition to engage in scholarly legal debates as long as he grasped the information he needed to try the cases he had at hand.

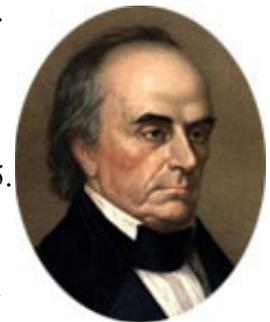
Franklin Pierce was Hillsborough's representative in the State Legislature, was twice a United States Congressman, and was elected to the Senate, a post from which he resigned after five years. He was also United States Attorney for New Hampshire. Lorenzo Dow, a famous

evangelist, predicted "that [Pierce] would become a distinguished soldier, would live in the White House, and would die a preacher."<sup>clviii</sup> Pierce was a general in the Mexican War and the fourteenth President of the United States.

Pierce was well loved and respected by his friends and associates. He was noted for his ease of manner and an exceptionally good temper.

### Daniel Webster<sup>clix</sup>

It was as a lawyer that Daniel Webster received his highest distinction. He was born in Salisbury on January 18, 1782. His youth was spent in the frontier with little opportunity for education. Despite this, he led his college class at Dartmouth at the age of nineteen. He was admitted to the bar in 1805. In 1806, Jeremiah Smith called him "the most remarkable young man he had ever met."<sup>clx</sup> Within two years of Webster's moving to Portsmouth, Jeremiah Mason declared Webster his most formidable opponent before a jury.



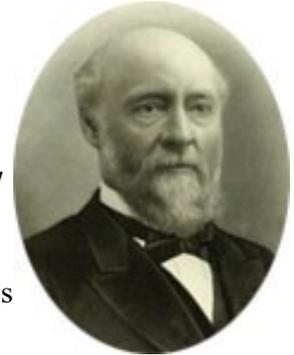
Daniel Webster lived in his home state of New Hampshire for eleven years after he began the practice of law. When he left for Massachusetts in 1816 he was considered a leading counselor and advocate at the bar. He had received acclaim as a political writer and speaker, and had performed admirably as a member of the national legislature."<sup>clxi</sup> Within four years of his move to Massachusetts Webster brought the famous Dartmouth College case before the Supreme Court. In that time frame, Webster also brought another case to the Supreme Court of Massachusetts, took part in the Massachusetts Constitutional Convention, and delivered an outstanding oration at Plymouth.

Webster's earliest work was his most brilliant. It is suggested by his biographers that he became somewhat jaded after years of public notice. As he aged he required some special motivation or a noble theme to incite his best efforts. He had no desire to use his talent for petty causes.

Webster was an accomplished advocate, constitutional lawyer, statesman, and orator. He worked with speed and intensity. On his farms at Marshfield and Franklin, he enjoyed the relaxation of the ocean and the mountains, of the rod and the gun. He used to love to declare his oxen "better company than the United States Senate."<sup>clxii</sup> Daniel Webster's name appears on the rolls of Doctors of Law at Princeton, Dartmouth, and Harvard.

George Hutchins Bingham<sup>clxiii</sup>

George Bingham was born in Littleton, New Hampshire on August 19, 1864. He received his first education in public schools, and then at Holderness School in Plymouth, New Hampshire, and St. Johnsbury Academy in Vermont. Judge Bingham graduated from Dartmouth in 1887 and from Harvard Law in 1891. He was admitted to the New Hampshire Bar in 1891 and practiced law with his father in Littleton. Upon his father's death, Judge Bingham began a practice in Manchester.



Judge Bingham was appointed an Associate Justice of the New Hampshire Supreme Court in 1902. He declined a nomination for Governor 1908. In 1913, Judge Bingham was appointed by Woodrow Wilson to the United States Circuit Court of Appeals for the First Circuit; he retired in 1939.

He was a member of the board for New Hampshire State College and a director of Merchants National Bank of Manchester. He enjoyed playing tennis and fishing.

George Weston Anderson<sup>clxiv</sup>

George Anderson was born in Acworth, New Hampshire on September 1, 1861. He began teaching in public schools when he was seventeen years old and used the money to support himself through Kimbell Union Academy, New Hampshire, and Cushing Academy, Massachusetts. He attended Williams College where he performed considerable literary work and engaged in debates. He graduated with honors in 1886.

Anderson graduated from Boston University Law School summa cum laude in 1890 and practiced in a partnership in Boston for six years and then as a sole practitioner. He was an instructor at Boston University law school for three years and a member of the Boston school committee for six years (1894-1900).

He was appointed United States District Attorney for Massachusetts in 1914. George Anderson was also a member of the Commerce Commission from 1917-1918. He received an appointment in 1918 to the First Circuit Court of Appeals. Judge Anderson was a trustee of the World Peace Foundation, the Charlesbank Homes, and Cushing Academy. He was involved in innumerable clubs and organizations and was twice married.

## Nathan Clifford<sup>clxv</sup>

Nathan Clifford was born in Rumney, New Hampshire on August 18, 1803. He was the oldest child and only son with four sisters. His father, Deacon Nathaniel Clifford, was a small farmer and his mother, Lydia (Simpson) Clifford, was an enterprising and energetic woman. Clifford attended Haverhill (New Hampshire) Academy at fourteen years of age and spent a year at the "Literary Institution" at New Hampton. While at Haverhill Clifford earned his living teaching in the district school and giving singing lessons. Clifford studied law in the offices of Josiah Quincy of Rumney, was admitted to the bar in 1827, and commenced practice in Newfield, Maine.



Nathan Clifford was very aware of his lack of higher education and this made him a more careful and painstaking student. This care, coupled with a strong willingness to work, developed in him the ability to formulate and defend the philosophies of Jacksonian democracy. Clifford entered politics in Maine in 1830 and was elected to the state legislature, staying there for four terms. In 1834 he became the Attorney General for Maine as a reward for his services to the Democratic party. From 1838 to 1843 he was a representative in the United States House of Representatives.

In 1846 Nathan Clifford was appointed Attorney General of the United States by President Polk. Clifford was apparently very nervous about being Attorney General. He was to perform his first official act, a trial, in front of the Supreme Court. A few days before the trial was due to begin, Clifford handed President Polk his resignation. Polk wrote the following in his diary, "I told him if he resigned now it would be assumed by his political opponents that he was not qualified and would ruin him as a public man."<sup>clxvi</sup> Clifford took Polk's advice and withdrew his resignation. He won his first case before the Supreme Court. This proved to everyone, including himself, that he was qualified to be Attorney General.

Throughout his term as Attorney General, Clifford was closely involved in policy decision and execution concerning the Mexican War, and went on a diplomatic mission to Mexico at the close of the war to ensure the ratification of the peace treaty and helped establish peaceful relations between the two countries. Clifford stayed in Mexico until the Democrats lost the presidential elections and the Whigs, now in power, recalled him to the United States.

Clifford was appointed to the Supreme Court in 1858. He was confirmed by a narrow margin of 26 votes to 23 in the Senate. Senators were hesitant about placing a pro-slavery Democrat on the Supreme Court. His specialties were commercial and maritime law, Mexican land grants, and procedure and practice. Justice Clifford was assigned to the first circuit, and sat on the bench in New Hampshire extensively from 1858 through 1874. James Bradbury describes the conditions Justice Clifford encountered while hearing cases in the first circuit as follows.

The district judges were most of them of advanced age, and there was a great accumulation of cases upon the docket, some of them of long standing, which needed to be disposed of. An enormous amount of labor was consequently thrown upon Clifford, who determined to clear the docket as soon as it could practically be done...He undertook the task as a conscientious duty, and he applied himself to it with all his energy and with untiring labor of several years until the work was accomplished. The entire year, when not employed in attendance upon the Supreme Court at Washington, was spent in the discharge of his circuit duties, with hardly a day of vacation.<sup>clxvii</sup>

The sudden death of the lamented Judge Shepley entailed, as he regarded it, an immense accumulation of work upon himself; and after a long and exhausting session at Washington, without any rest he entered upon the hearing and adjudication of a mass of grave and difficult cases upon the circuit, and applied himself unsparingly until the docket was cleared. The effort was far beyond even his power of endurance. His health never fully recovered from this terrible strain upon its resources.<sup>clxviii</sup>

Though he rarely declared any legal philosophy about the Constitution, Justice Clifford believed in a sharp dividing line between federal and state authority. His major constitutional contribution may have been his dissent in *Loan Association vs. Topeka* (20 *Wallace* 655) in which he set aside "natural law," or any ground other than clear constitutional provision, from the court's reasoning in striking down legislative acts. Justice Clifford's opinions were comprehensive essays on law. They were cited as authorities by other courts. Justice Clifford wrote the opinion of the Supreme Court in 398 cases.

As the Senior Associate, Justice Nathan Clifford was asked to take the lead on numerous occasions in which the court lacked a Chief, though he was never himself to become Chief Justice. Justice Clifford attempted to retain his seat on the Court even after an apoplectic stroke in order to prevent an opposition party President from having the opportunity to appoint his successor. After a year of invalidism, Justice Clifford died on July 25, 1881.

Levi Woodbury<sup>clxix</sup>

Levi Woodbury was born on December 22, 1789, the second of ten children born to Peter and Mary Woodbury. Levi attended his native village school of Francestown, New Hampshire, and Atkinson Academy. He graduated with honors from Dartmouth College in 1809, and subsequently studied law with Judge Jeremiah Smith in the Litchfield (Connecticut) Law School and in Boston. Woodbury was admitted to the bar in 1812.



Woodbury practiced law in Francestown and Portsmouth and became politically involved in the War of 1812 as an advocate of President Madison's policy. Woodbury was appointed associate justice of the state superior court in 1817 by Gov. William Plumer, a friend. Woodbury was elected governor himself in 1823. He was Speaker of the House in the state legislature in 1825. He was then chosen to be a United States Senator for the next six years. Woodbury was elected to the state Senate in 1831, but in May was appointed Secretary of the Navy. He became Secretary of the Treasury under President Jackson in 1834 after a strong stand against the Bank of the United States. Woodbury was responsible for many fiscal decisions which benefitted public investors and banks. He tried to convince Congress to use surplus funds for public works. He also attempted to popularize the use of hard money. He retired from office when President Van Buren came to power in 1840. Woodbury came out of retirement and was elected to the United States Senate in 1841.

After declining an appointment as Minister to Great Britain, Levi Woodbury was nominated by President Polk for the Supreme Court. In his capacity as Supreme Court Justice, Woodbury sat in the Circuit Court of New Hampshire from 1845 to 1851.

Justice Woodbury was a calm, self-possessed, courageous man, in politics a party man and strict-constructionist. For instance, he was opposed to slavery, but believed the laws protecting the institution of slavery must be upheld until they were changed.



Woodbury was a very progressive thinker and speaker. He was an advocate of normal training for teachers, systematic physical education, free public schools, more education for girls,

museums designed to educate adults, widespread, simplified educational literature, greater access to information on new inventions, and a more scientific approach to agriculture, all of which were novel ideas for his time.

Justice Levi Woodbury died in Portsmouth, New Hampshire, on September 4, 1851.

## David H. Souter

David H. Souter was born on September 17, 1939 in Massachusetts, moving to Weare, New Hampshire while still a boy. He graduated from Harvard College in 1961 with an A.B. degree. He subsequently attended Magdalen College, Oxford from 1961 to 1963 as a Rhodes Scholar. He graduated from Harvard Law School in 1966. Souter received both his A.B. and M.A. degrees in Jurisprudence from Oxford University in 1989.

David Souter has served the state of New Hampshire in the legal profession since his graduation from Harvard Law School. He was an associate at Orr and Reno from 1966 to 1968 and was then appointed to public service as Assistant Attorney General in 1968. He became Deputy Attorney General in 1971 and Attorney General in 1976. Souter was appointed Associate Justice of the New Hampshire Superior Court in 1978 and Associate Justice of the New Hampshire Supreme Court in 1983. He was appointed to the United States Court of Appeals for the First Circuit and was sworn in on May 25, 1990 in the Cleveland Federal Building in Concord.

On July 23, 1990, Justice Souter was nominated by President George Bush to the Supreme Court of the United States. He was confirmed by the senate and sworn in on October 8, 1990 as the 105th Justice.

Justice David Souter has been a member and president of the Concord Hospital Board of Trustees, a New Hampshire Historical Society Trustee, a member of the Dartmouth Medical School Board of Overseers, a member of the National Association of Attorneys General, the New Hampshire Bar Association, and the American Bar Association.

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