A HISTORY

OF THE

UNITED STATES COURT

FOR THE

EASTERN DISTRICT OF NEW YORK

To Commemorate and to
Celebrate a Centennium
1865-1965

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Editor, and Chairman
Centennial Committee

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* The present Bench.

*A Court is Born**

THE YEAR WAS 1865. The place was Washington, D.C. The occasion was a session of the United States Senate. The matter under consideration was the great commercial Port of New York, and a proposed bill to establish an additional United States District Court to deal with its admiralty litigation.

"This proposed Bill," the Senator from Connecticut was arguing sarcastically, "creates what is called 'an eastern district of New York.' The whole supply of business for it will come from the Port of New York; and we shall have the strange spectacle of two Federal judicial establishments within three miles of each other in competition for business."

A member of the House of Representatives from the City of Brooklyn had introduced "A bill to facilitate proceedings in admiralty in the Port of New York," which proposed to remove Staten Island and The Long Island from the Southern District of New York, to become the "Eastern District of New York." The House had honored it as "local legislation." It was before the Senate at this point, and the Senator from Connecticut was pointing out the mischiefs that could grow out of it. He railed at lawyers who controlled admiralty litigation, and who tried or adjourned admiralty causes at each other's convenience but at the court's inconvenience, and who would make the law's delays the worse if they had to journey between the Island of Manhattan and the City of Brooklyn on their law business. He argued that Congress would expedite admiralty litigation by creating an additional judgeship for the existing Southern District, rather than by an additional district in which to delay and procrastinate.

When the Senator from New York spoke in the matter, in opposition, he referred to a Connecticut judge, who had been sitting in the New York District as a visiting judge, at a per diem that had enriched him yearly by several thousands over and above his Connecticut salary.

"Politics!" the New York Senator chided.

The Senate voted 26 to 7, and confirmed the privilege of a senator to solve the internal problems of his own state. Thus, in the 38th

* By Bernard A. Grossman, past president, Federal Bar Association of New York, New Jersey and Connecticut.

Congress, in the year 1865, the Senate and House of Representatives of the United States passed an Act, and President Lincoln signed it (13 Stat 438) creating the United States District Court for the Eastern District of New York.

As follows:

"BE IT ENACTED by the Senate and House of Representatives of the United States of America in Congress assembled,

That the Counties of Kings, Queens, Suffolk and Richmond[1] in the State of New York, with the waters thereof,

Are hereby constituted a separate judicial district of the United States, to be styled the Eastern District of New York . . .

BE IT FURTHER ENACTED, that the district court for the said Eastern District shall have concurrent jurisdiction with the district court for the Southern District of New York over the waters within the counties of New York, Kings, Queens and Suffolk, in the State of New York . . .

BE IT FURTHER ENACTED, that in case of the inability on account of sickness . . . (or) whenever from pressure of public business or other cause, it shall be deemed desirable by the judge of said southern district that the judge of said eastern district perform the duties of a judge in said southern district, an order may be entered to that effect in the records of said district court, and thereupon, the judge of said eastern district shall be empowered to do and perform, without additional compensation, within said southern district of New York, all the acts and duties of a district judge thereof.

APPROVED: February 25, 1865."

The first judge of the new court was Charles L. Benedict. He was appointed March 9, 1865; sworn in March 20th; and began his official career without an official courtroom or even an official courthouse; without a bar, and without rules of court to guide them; without dockets and files, and without a staff to make entries in them.

The first session of this new court was advertised to be held on March 22, 1865 in the Governors' Room, at the Brooklyn City Hall, at noon. As reported in the next day's issue of the New York Times, a large gathering of members of the bar, and other spectators collected. However, the room had no accommodations for the proceeding since the only furniture consisted of a table and four chairs. One of the Kings County supervisors then invited the court to repair to the

1. At the date of this legislation Nassau County had not yet been organized.

Supervisors' Room in the Brooklyn County Court House and it was there that Judge Benedict opened the court by reading the Act constituting the Eastern District. Immediately thereafter, he swore in the Court Clerk, the United States Attorney and the Marshal of the new District. Inasmuch as the new court had no rules, Judge Benedict announced that until otherwise ordered, the rules of the Southern District would be the rules of the Court, and that court sessions would be held from noon until 4, and that the Judge would attend to chamber business from 10 till noon. And he further announced that all persons present, who were admitted in the New York State Supreme Court or in other Federal courts would be similarly admitted as attorneys, solicitors, proctors, and advocates of the new Court. The newly sworn-in United States Attorney thereupon moved the admission of 41 gentlemen, who took their oath of office, four at a time. However, the new court was not as yet stocked with oath-of-allegiance forms, and the new Clerk had not as yet opened a Register of Attorneys. Hence, the formalities of admission could not then be completed. There being no further matters that the court was then in a position to proceed with, Judge Benedict closed the court's March term, and announced that the court's next term would open on the first Wednesday in April, at a place to be fixed later, and with due notice of same to be advertised in the newspapers.

Thus, the first session of the new court closed.

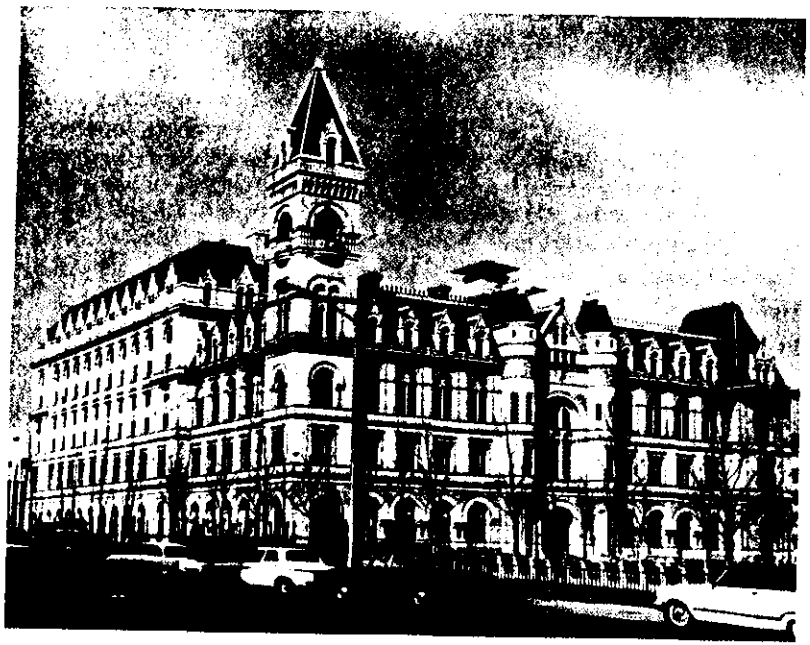
Thereafter, the United States Marshal found space for the sessions of the court in one of the trial rooms of the County Courthouse. The Court's Clerk, the United States Marshal and the United States Attorney found offices at 44 Court Street. In 1867, after two years of tenancy in the County Courthouse, by courtesy, and still without a home, the sessions of the court were removed to a room which had formerly been Dodsworth's Dancing Academy, and its Clerk, Attorney and Marshall moved their offices to No. 189 Montague Street.

Periodically, the Judge wrote officialdom in Washington, protesting. Under date of October 10, 1865 he wrote:

"The Department of the Interior has not as yet taken any steps to provide rooms for the use of the court, although it has been organized since March last, and although the Marshal has transmitted proposals conforming to the rules of the Department. It seems to me that justice to the court requires that it should be furnished with proper rooms, and that without further delay, as the temporary arrangement made by the Marshal in the emergency cannot be long continued.
I remain, Your obt servant, Chas. L. Benedict, USDJ"

The Homes of the Court

ON THE DATE it was first convened, the court for the Eastern District of New York was a court without a home. It first sat in the County Courthouse. It then occupied a room in the City Court of Brooklyn. From April, 1867 to March, 1873, it had quarters at 189 Montague Street; then, until 1891, at 168 Montague Street. From 1891 to 1892 it sat in the backyard, in a building erected there for it, behind two remodeled houses at 40 Clinton Street. On April 22, 1892, the Court moved into the United States Post Office Building, at Washington and Johnson Streets, and rented additional space in the Brooklyn Daily Eagle Building, across the street, for overflow Chambers and offices. In 1932 an addition was added to the Post Office Building to take in this overflow and its increments.



The Court's Home 1892 to June 1964

1964—The New Courthouse

AT LONG LAST, the Court has now been provided with a home of its own.

The new, magnificent home for the United States Court for the Eastern District of New York, in the Brooklyn Civic Center, is shown at the frontispiece. Set up against the past, it is like beautiful poetry against commonplace prose. Yet, it is practical in every detail, adapting architectural expression to function: the basement, slightly below street level, provides a parking area for the official autos of the United States Marshal, and for the judges and other officials. The Court Clerk is housed on the ground floor. There are eleven impressive courtrooms in the building, one of which is a ceremonial court, large enough to seat all the judges, en banc, and an audience of four hundred. Each of the District Court Judges has a magnificent suite, of an office for his secretary, one for his clerk, and his own chambers, washroom, and secondary door to the corridor. There is a similar suite for the Court of Appeals Judge resident in the District. The two Referees in Bankruptcy in the county, housed in the courthouse, have substantially similar accommodations, and a courtroom; and the two United States Commissioners each have an office, and share a dignified courtroom. Referees and Commissioners wear a robe. There is a Conference Room for lawyers and clients; an attractive Lawyers' Lounge, with a clubroom atmosphere; a Court Library on the 4th floor, open to members of the bar, and reserve space for future expansion on the 6th floor.

1965—The Second Centennium Begins

AFTER one hundred years of existence as a tenant, the court has acquired a home of its own: a fifteen million dollar building—its own. Here it will begin its second centennium.

To commemorate this first century, and to celebrate it, we now salute the United States District Court for the Eastern District of New York, and present this short note on its birth and its growth to its present Home.

B.A.G.

The Past Bench of the Court

CHARLES L. BENEDICT	1865–1897*
ASA W. TENNY	1897–1897***
EDWARD B. THOMAS	1898–1907*
THOMAS I. CHATFIELD	1907–1922***
VAN VECHTEN VEEDER	1911–1917*
EDWIN L. GARVIN	1918–1925*
MARCUS B. CAMPBELL	1923–1944***
ROBERT A. INCH	1923–1958**
GROVER M. MOSCOWITZ	1925–1947***
CLARENCE G. GALSTON	1929–1957**
MORTIMER W. BYERS	1929–1960**
HAROLD M. KENNEDY	1944–1952*

*resigned, while in office.
**retired, while in office, but pursuant to designation of the Chief Justice of the United States sat thereafter as a Senior Judge.
***died, while in office.

*Admiralty**

IN MAY OF 1865, the United States Marshal for the newly formed Eastern District of New York advised the Honorable, the United States Secretary of the Interior, that the newly formed District had a coast line of three hundred and fifty miles, and that one-fourth of all the ships engaged in foreign Commerce from the Port of New York arrive, discharge, load and depart in and from that District.

This would indicate to a person looking forward that the Eastern District stood on the threshhold of a period of lively and profitable trade, and filled with controversies of fact and law that grow out of it. It foretold that increasing commerce[1] must bring increasing incidents of damage to vessels and cargo, and increasing incidents of injuries to the men who do the traditional work that goes with ships and shipping, in port and out of it, and that all this in turn must bring a proportionate increase in litigation. In the pages that follow are examples of the typical litigation that has come and still comes out of it, in admiralty, and illustrations of it from specific cases that have come before the court of the Eastern District.

The First Admiralty Calendar Call in the new District Court was held in November 1865. Judge Charles Benedict presided and there were eight cases called, of which five were apparently not reported.

Two of the cases involved collisions. In one, "The Chesapeake," (5 Fed. Cas. 557) a collision between a ferryboat and a steamer (then called a "propeller") occurred in December, 1864, and the decision was rendered in February, 1866, or within fifteen months of the collision. This decision was affirmed by the Circuit Court in June, 1867, less than three years after the incident occurred. The other collision, "Whitney vs. the Empire State," occurred in March of 1865, between a schooner and a propeller. Decision was rendered in May, 1866 (29 Fed. Cas 1087). Another prompt decision was rendered by Judge Benedict in the case of "The Alida" when the accident occurred in September, 1869, and decision was rendered in December of the same year.

* By Elizabeth Boyd, associate Haight, Gardner, Poor & Havens, and general assistant to the late Col. Kenneth Gardner, as past chairman of the Association's Admiralty Committee.

1. Tonnage in that decade was estimated at a half million tons per year; tonnage in 1963 was estimated at twenty million tons.

Nearly eighty years later, in 1944, the Court met this record for quick disposal of cases when it frustrated the attempt of a Panamanian Company to regain control of a tanker owned by it but in the possession of and being operated by the Norwegian Government in exile, having been seized in a Prize Court Proceeding in the Netherlands West Indies. The vessel was attached January 13, 1944; the Kingdom of Norway appeared in opposition on January 17; hearing was held February 8 and decision vacating the attachment was rendered February 10, 1944. *The Janko*, (1944 AMC 659, 54 Fed. S. 240). After a hearing on the afternoon of the same day the Circuit Court of Appeals for the Second Circuit sustained the District Court's decision by denying a petition for a Writ of Prohibition, against release of the vessel, the whole case being completed in only 28 days, probably a record for a civil litigation in courts of first instance and appeal.

The Harter Act, 1893, brought to the Court problems relating to seaworthiness, proper care of goods, differentiation between the owner's failure to exercise due care to provide a seaworthy vessel and crew errors in management and navigation. Such questions still plague shippers, shipowners and the courts and, despite statutory definitions, each case must be decided on its particular set of facts, so that precedents, although taken into consideration and given due weight, are rarely controlling. Since the Harter Act have come, among others, the Shipping Act of 1916, the Merchant Marine Acts of 1920, 1928 and 1936, the Intercoastal Shipping Act of 1933, the Suits in Admiralty Act of 1940, the Transportation Act of 1940, and their various amendments, all of which have required study and interpretation by the Court. The Federal Tort Claims Act of 1946 brought much new litigation. The Brooklyn Navy Yard, and the new government installations in the District and the millions of dollars in new dock facilities in Brooklyn bring many new injured longshoremen and harbor workers covered by Federal law into the court and add to the caseload.

The question of seaworthiness is a continuing one. In 1898 the Court held that a ship was responsible for damage to a cargo of bananas kept waiting on the pier because her boilers failed when she was on the way to collect them. *The George Dumois*, (88 F. Supp. 537). In the same year a vessel was exonerated where newly installed refrigerating machinery did not work properly and there was a clause in the contract providing that the vessel would not be responsible for failure of refrigerating machinery. *The Prussia*, (88 Fed. 531). The effort of the owner to ensure seaworthiness of vessels is in issue in practically every claim for cargo damage and personal injury.

After passage of the Volstead Act in 1919 new problems arose and were solved in novel ways and the Court, in the case of "*The Zeehond*," (*United States* vs. *2180 Cases* of Champagne, (1925 AMC 595) held that a Dutch vessel captured off Fire Island with a cargo of liquor aboard was subject to forfeiture for "failure to manifest cargo bound for United States." Although this decision was reversed by the Circuit Court of Appeals on the ground that there was no evidence of arrangements for sale in the United States having been made, the Circuit Court of Appeals reversed itself in 1929 and followed the Court's reasoning in the *Zeehond* case when it held in the case of the *Marion Phillis*, (1930 AMC 488, 36 F .2d 688) that there was "a plain and reasonable inference that she was seeking to discharge her cargo on or near the Long Island coast," and that in view of the circumstances the burden of establishing innocence was upon the owner. One of the last of the cases involving the Volstead Act was that of "*The Felicia*" (1936 AMC 522, 13 Fed. Supp 959) where the Court held that a power yacht captured in August, 1933, with a cargo of liquor on board was subject to confiscation for trading without a license, bringing in unlawful merchandise and having no bill of lading or manifest on board.

During periods of war the Court has passed upon seizure of foreign vessels and prizes. In a First World War case, *In re Muir*, (25 U.S. 522), the Eastern District Court held that a vessel under time charter to the British Government, by terms of which the owner was to supply the crew and accept all risks of the voyage, could not be regarded as a public vessel and was therefore subject to the jurisdiction of the United States Federal Court.

In the case of *The Navemar*, (1938 AMC 1110) a case arising out of the Spanish Civil War, the Court held that actual possession by some act of control or dominion was required to support a Libel for possession of a private vessel by the government of its owners. This case was appealed to the Supreme Court (303 U.S. 68) by the Spanish Ambassador who claimed that the vessel was a public vessel of Spain, not subject to judicial process in the United States, by reason of the fact that it had been attached by the Spanish Government. The Supreme Court held that the Spanish Government should be given an opportunity to prove its ownership.

In 1942, the name of the Navemar, converted to a passenger ship because of the war emergency, again appeared on the dockets of Eastern District, this time in a Petition for Limitation of Liability filed by the owners as a result of numerous suits filed by passengers fleeing from the War who had been made ill by overcrowded conditions. (1943 AMC 123)

The Eastern District Court has been called upon to decide matters of varied interest and importance and has been kept busy with various maritime problems during time of peace.

In 1922, as a result of a ship sinking in the Arabian Sea, in 1920, the Judges of the Eastern District were called upon to determine when the voyage terminated, whether delay in paying wages due to absence of the Captain was justified and whether certain members of the crew were entitled to transportation to their homes in England. (*Villegas et al* vs. *United States*, 1923, AMC 531, F 2d 300)

In 1932, in the case of *Lucas* vs. *Lockwood*, 1932 AMC 1609 1 Fed. Supp. 591 the Court was called upon to determine who should pay the wages of a watchman who was hired by a barge owner's widow on the day after the owner died. It was decided that the widow having hired the watchman should pay him but that she might have a claim over against her husband's estate.

Also in 1932, the Court declined to entertain a suit for damage to cargo carried on a British Vessel from the British West Indies to New Brunswick, even though the insurance carrier had an office in New York City, on the ground that the ends of justice could best be served by having the issues tried in the Courts of the parties in interest (*Habson* vs. *s/s Lady Drake*, 1932 AMC 745, 1 Fed. Supp 959)

In 1942 *in re Olsen's* case (1942 AMC 241) the Court found that a seaman on a 53 foot deep sea fishing boat whose leg was injured when it was caught in a bight was injured solely by reason of unforseeable accident and that the fishing boat was seaworthy.

Since the second World War the Court has rendered influential decisions closely defining the responsibility of the ship and of the stevedores. *Ryan* vs. *Pan Atlantic*, (1954 AMC 766, 211 F 2d 277) established a precedent which has been generally followed.

The fire and explosion on the Luckenback pier in Brooklyn in 1956, brought over 500 claimants represented by 200 attorneys who started 300 suits for damages. These cases were consolidated at the instance of the Court for the purpose of pre-trial procedures and four attorneys were appointed general counsel to serve without pay and to coordinate and direct pre-trial procedures for all plaintiffs. (1960 AMC 2240 181 Fed. Supp. 440, 1961 AMC 1263, 25 FRD 483).

Since the Admiralty Section had its first Calendar Call the United States District Court for the Eastern District of New York has passed on problems arising out of collisions, strikes, maritime liens, groundings, injuries to longshoremen, and the operation of tugboats, yachts and ocean going vessels.

Seamen are constantly bringing claims against shipowners for wages, for maintenance and cure and for damages resulting from accidents occurring aboard the vessels. Passengers and their bon-voyage-visitors are constantly bringing suit for injuries on board vessels, for failure to give prompt and proper medical treatment in the case of illness or injuries, or for being injured while going from ship to shore in a tender. Longshoremen, shoreside workers, and repairmen in port, engaged in preparing a vessel for a voyage or in terminating it, are constantly suing for injuries occurring from improper use of proper equipment and gear, or by the use of equipment not reasonably fit for the intended service: and often not by fault of the vessel but the fault of the stevedore-contractor—for in admiralty a contractor's negligence can become the vessel's.

Passengers and their invitees sue only for negligence: small negligence might sometimes render a carrier liable, for an owner owes its passengers the care necessary to protect them from harm. *Dann v. Compagnie Generale Transatlantique*, 45 F. Supp 225 (1942). E.D.N.Y. However, an accident does not per se render a vessel liable; and here again, as in most similar admiralty litigation, the knowledge and experience of a trial court comes forward to clear the atmosphere, and adjust the controversy to everyone's satisfaction.

Seamen sue because the vessel as such is unseaworthy; or because a fellow seaman was incompetent, or the stevedore's longshoremen were incompetent, thus contributing to the occurring of the injury; or the crew in general, or a supervising officer, were not reasonably adequate in number or in quality to render the intended service, to the seaman's resultant injury; or the method of loading the cargo, or the manner of stowing it, or the improper handling of appliances thus giving rise to a condition of danger, or the use of appliances that were unreasonably improper for their intended use.

The Admiralty Calendar of the United States District Court for the Eastern District of New York is filled with each and every type of these claims, and more; and with the aid of its Bench, so well equipped with experience and understanding, are settled in large part before trial.

And the Admiralty Calendar keeps ever refreshed with claims of other claimants, on new injuries, and on other occurrences. They come now not only from ships at sea, but also from ships in the air[2], to a Bench that manages to cope with them.

E.B.

2. See section "The Air Age," post, on litigation in the District arising out of aircraft accidents. New airfields are being planned; take-offs and landings in the old are being doubled. The air age is only in its beginning.

*The Bankruptcy Part of the Court**

CONGRESS passed the Act of 1867, with which this court began its judicial work in bankruptcy, in the period of a war-depressed South and a comparatively booming North. There had been no statute in that field of law since the one of 1841, repealed in 1843; and a learned clerk of the court, noted for his manuals on Federal practice, wrote of it in 1869 that "the labor thrown upon the district judges by this vast and increasing class of business has been very burthensome and perplexing, especially when, as in the New York districts, the amount of regular judicial duty had previously to the bankruptcy law been quite enough."

This Act of 1867 provided for the involuntary seizure of a debtor's property where he had committed stated acts of bankruptcy[1]; and it provided also for the discharge of a debtor from his debts, unless he had committed stated grounds[2] for its denial; and in 1874 it was amended to provide for a composition settlement with creditors, under the courts supervision, and without an adjudication of bankruptcy.

The effect of this act on the business of the country was unsatisfactory, and in 1878 it was repealed: for under it businesses were catapulted into bankruptcy too hastily; and under it bankrupts came out with debts as heavy as before.

Discontent has always been a source for change. The Act of 1898, which followed that of 1867, was intended (a) to slow down the immense creditor establishments which had been throwing businesses into bankruptcy where the business was only temporarily embarrassed; and (b) to discharge the debtor in full from his debts. Yet these fundamental ends for a law intended to harmonize the dependent relationship of creditors and debtors were incorporated in the Act of 1898 only after

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The modesty of Ye Editor, as a sitting Referee in Bankruptcy, has been goaded by Max Schwartz to remind the Bankruptcy Bar that the late U.S. Supreme Court Justice Harold H. Burton referred to Referees in Bankruptcy as "the unsung heroes of the Federal Judiciary."

1. Conduct inconsistent with an intent to pay debts: as evading service of process for monies owed; or hindering creditors in other stated ways.

2. Reducing equality among creditors by preferences to some; losing monies by gaming or squandering above the means to do so; operating in a state of insolvency that results in a dividend under fifty per cent.

compromise and concession. Creditors did not want to surrender their previous statutory minimum of fifty cents on the dollar as a condition to a discharge from debt. What might perhaps be lost to them under the new approach was made bearable to creditors by proposals to have stricter controls under the new law—to reduce what goes out as administration, and perhaps thereby approach the ideal of a fifty percent minimum to creditors.

Thus to the labors of the court was added the requirement of a strict supervision of fees and expenses: fees were examined (under applications for allowances and their review), and re-examined (under section 60-d), and expenses were catalogued by rule as allowable or not (postage, phone calls, fares, clerical, executive, etc.), referees were first paid on the basis of the distributable fund (½ % on dividends), and in extension of this spirit were later limited by a ceiling (the Judge Knox rule of a $20,000 annual maximum), reduced by the Chandler Act to $10,000, and less for part-time Referees, now modified upwards by the across-the-board philosophy of an allowable increase to meet an increased cost of living. The restriction, limiting a debtor to one discharge per six years, was a compromise on the Act of 1867 provision that when a debtor had shown his inefficiency by one bankruptcy, he could have a second discharge only on terms relative to a dividend to creditors. Except where the thinking of 1898, and the progressive enlargements of it in the Chandler Act, and the later subdivision known as Chapter X and Chapter XI, collided with the theories of 1867, the two Acts were in harmony, in principle.

Thus, almost a century ago, this court considered the matter of *Samuel D. Waggoner, bankrupt.* 1 *Benedict's Report* 532. E.D.N.Y., 1867. The bankrupt applied for a discharge, and specifications of objection to its grant were filed. The court held that "specifications must be sufficiently definite to enable the court to see that a fair question of fact exists." The court struck the specifications as too general, with leave to file more definite ones. The law today is the same.

In the *matter of Brooklyn Market Place* (E.D.N.Y., 1872), the trustee applied to sell the bankrupt's realty free of incumbrances, their lien to be transferred to the proceeds of sale. The court held that it had jurisdiction to do so, but refused to exercise it without notice to all lienors. The law today is the same. *In the matter of Hotel St. George.* Here, in a similar problem of administration, the present court required and followed the same procedures.

An examination of the bankruptcy cases of 1963, 1964 alone, indicates how varied and complex the work in bankruptcy is compared

to what it was in the last century. The 1,138 filings for the year 1963, as a number, tell only part of the story of the activity in the bankruptcy court. The remainder is reflected in the numerous proceedings within each filing. A bankruptcy case, for example, may include: objections to the discharge of the bankrupt; determination of the status of claims; turnover proceedings; objections to the confirmation of a plan; determination of rights to property; a review of the orders of a Referee; and a host of miscellaneous matters. They represent an astounding work-load performed by the bankruptcy court. Different indeed are the problems and the pace of the bankruptcy court of today from that at the turn of the century. For example, in the *Matter of David Cohen*, 683–1900, E.D.N.Y., the bankrupt's wife, examined under Section 21-a, and cautioned that she would be required to sign and swear to her testimony, stated that she could not read. The Referee thereupon undertook, that when the questions and answers about to be given were reduced to writing, he would read them to her, before she swore to them, and witnessed her oath by her mark of a cross.

A look at some of the 1963, 1964 proceedings, illustrates the complexity and work-load of the problems involved. *Dilbert's Quality Supermarkets, Inc.*, E.D.N.Y., 1963, dealt with a chain of fifty supermarket stores. There was publicly held stock: 176,000 shares preferred and 840,000 shares common; listed on an exchange. The assets involved exceeded $7,000,000. Dilbert's filed a petition under Chapter XI, and as so often happens in such proceedings, what might seem to the debtor to be for the common good, arouses prompt and intensive opposition, and court proceedings. Here, the problems of the court included proceedings to shift the proceeding out of Chapter XI, and into Chapter X; the feasibility of the plan presented, the opposition; the amendments; the interpretation of leases; the right to sell or abandon leases and stores; conditional bills of sale on fixtures; and the intermediate steps of business and law that go to shaping a re-organization plan until it reaches the ultimate point where it is either feasible, or doomed to abandonment.

The *Matter of Soviero* v. *Franklin National Bank of Long Island* E.D.N.Y., 1964, dealt with a parent corporation and its fourteen affiliates. The parent filed under Chapter XI for reorganization, but failed to present a plan to the satisfaction of creditors. Accordingly, it was adjudicated a bankrupt, and put in line for liquidation. The trustee moved by summary proceedings to take possession of the fourteen affiliates as assets to be administered as part of the bankruptcy estate. The defense in opposition was "corporate separateness." While cases

of piercing the corporate veil are no longer novel, as established rights at law, the finding of facts to warrant a piercing requires toil and skill, and that it is now done in the course of the administration of bankruptcy cases indicates the enlargement over the years of the powers and potentials of that court. The Court of Appeals, Second Circuit, passing on the skill with which the bankruptcy court had done its work of piercing here, said: "Even Salome's (veils) could not have been made more diaphanous."

The matter of the work of the court in controversies over a discharge is well illustrated in *Caridi* v. *Murberg*, E.D.N.Y., 1964. The bankrupt had transferred premises to his wife and her father. Objections for such doings were filed to his application for a discharge, and sustained. The transfer having been made without consideration, the trustee then pursued the transferee, summarily, and recaptured the property for creditors. Thus, one proceeding not only had in it the hearing of a discharge proceeding, but a trial for the recovery of a fraudulent transfer.

The complexity of proceedings in bankruptcy today is well illustrated in the *Matter of California Motors, Inc., bankrupt*, 122 F. Supp 885, E.D.N.Y., 1954. Here the trustee instituted a proceeding against the president of the bankrupt for the turnover of $24,813., cash. The respondent's defense was that he had lost it, gambling. When the respondent failed to comply with the Referee's order directing the turnover, a second proceeding followed to certify the respondent for contempt. The defense was an alleged inability to comply with the Referee's turnover order; and there was a third proceeding to punish for contempt. Although a turnover order is *res judicata*, as to possession of the *res* on its date, the court can admit and consider testimony offered at an ability to comply proceeding. Thus a trustee has a hurdle, again. And as the respondent, in jail for contempt for his failure to disgorge, or his failure to comply with the turnover order, however one views it, periodically moves for his release on the argument that a guilty man would surrender $24,813 rather than pass his years in such retirement in jail, the trustee must periodically defend his position, and attack that of the respondent, until eventually either the trustee or the defendant ends up with the fund, or there is a stalemate leading to some form of clemency.

On this occasion of its hundreth year, we take leave to salute the United States Court for the Eastern District of New York for the contribution it has made in the effective disposition of the bankruptcy and reorganization problems of the District.

B.W.

*Civil Rights**

THERE is a concept of ancient acceptance that civil rights is "reasonableness judicially determined." Our federal Supreme Court has been extraordinarily busied handing down rulings that illustrate "reasonableness" within that concept.

The United States Court for the Eastern District of New York has shared in this development. Four cases, all recent, are illustrative:

Blocker v. *Manhassett Board of Education*, 226 F.Supp. 208;

Evergreen Review, Inc. v. *Cahn*, Index No. 64 C 441;

United States v. *Lavelle*, 306 F.2d, 216 (C.A.2, 1962);

United States v. *Rudd*, Index No. 64 M 433.

In the *Blocker* suit, the court ruled that a rigid, non-transfer policy that limited a public school 99% Negro population to the one school in the area of their residence constituted state-imposed segregation, and that it was unconstitutional, and that the Board of Education must discontinue that rigid, no-transfer policy that acted as a gate to lock the Negro school population within that one area.[1]

In the *Evergreen Review* action, a three-judge court considered the County District Attorney's seizure, under New York Penal Law, sec. 1144, of a substantial printing of the "Evergreen Review." The statutory court ruled that such an interference, prior to a judicial determination of obscenity was a violation of civil rights, and ordered the District Attorney to release the seized magazines, and to restore them to the complainant.

The *Lavelle* and *Rudd* cases illustrate the use of coram nobis proceedings in federal criminal cases to redress deprivations of constitutional rights.

The *Lavelle* case: in 1943, Lavelle had been arraigned before a prior Bench of this court, from which he received no information nor advice that he was entitled to counsel; and without counsel, he had pleaded guilty. Nineteen years later, in 1962, under a coram nobis proceeding, the federal Court of Appeals set his conviction aside, under the authority

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1. The opinion and ruling of the court was approved at a duly held meeting of the community held to discuss it, and to consider acceptance of it, or appeal.

of *United States* v. *Morgan*, 346 U.S. 502 (1954). In accord: *U.S.* v. *Forlano*, 319 F.2d 617 (C.A.2, 1963).

The *Rudd* case: In 1927, Rudd was tried and convicted before a prior Bench of this court and a jury. The defendant Rudd charged that the prosecutor had suppressed evidence favorable to him, and followed this with moves for a new trial or appeal. The then trial judge who felt convinced of the defendant's guilt, advised him to drop these moves and accept the sentence he was about to get, or, the trial judge threatened, he would add another five years to it. At that point, the defendant yielded. However, thirty-seven years later, in 1964, he brought his injured feelings before the present Bench of the court under a coram nobis proceeding. The present United States Attorney conceded the facts. The court ruled from the Bench for the aggrieved movant, saying: "What happened was under practices and procedures that existed then, and are now past history. It doesn't happen now."

The world changes. Life changes. Even the Supreme Court overrules itself, and changes. They all move with the times. Laws and decisions reason toward objectives: to attain the more perfect justice which is always beyond. For law, like the world it serves, is a living, breathing, vital thing that grows. It may move on at times with an exasperating slowness, but like life itself it cannot move ahead by itself: it must wait on the development of the body it serves. The Bench of the United States Court for the Eastern District of New York has been currently, extraordinarily busied with such matters of civil rights before it.

The decisions in the field of human rights that are of particular importance and impact today[2], had their beginnings in the 1890's and the early part of the 1900's. The turning point is usually regarded as the *Minnesota Rate* case[3] making "reasonableness" a judicial question and not a legislative one, and a foundation plank of civil rights.

2. It is relevant to refer here to an early development in human rights attitudes, in religion, in our own history. Colonial laws established an official church in the Colonies (tax supported): the Church of England in the Colonies of Virginia, Maryland, North and South Carolina, Georgia and New York, and the Congregational Church in the Colonies of Massachusetts, Connecticut and New Hampshire. Other denominations, and the Catholics in particular were excluded from holding public office and voting. Attendance at Sunday services was compulsory. Denominations that profaned the Lord's Day by absenteeism, or Quakers with a little too much "liberty of conscience" that met in the woods on Sundays, were haled into court and fined, or pilloried. State Constitutions, after 1776, separated church and state, and prohibited an official constitution. To the contrary, even today, Central and South American countries provide in their constitutions for a state religion.

3. Chicago, etc. Ry v. Minnesota, 134 U.S. 418 (1890), overruling its earlier position in Munn v. Illinois, 94 U. S. 113, and Peik v. Chicago, etc., 94 U. S. 164, where legislative price fixing was held constitutional, and not subject to judicial review.

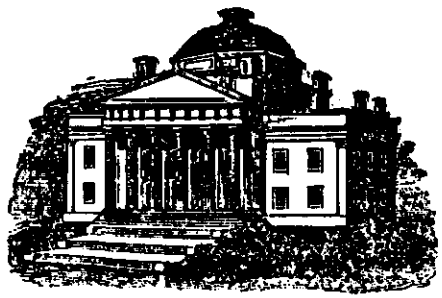
The next step forward in the application of due process powers came with the power of a court in the area of "free speech."

The change in this area came with *Gitlow* v. *New York*, 268 U.S. 652 (1925). This is the turning point in the application of the rule of reasonableness in the judicial evaluation of utterances, and in the field of human rights, in general.[4]

As stated in the opening of this section, the country has moved forward on its liberal course, under the decisions of its highest court, often divided five to four. And, as pointed out in the opening of this section, the Federal court for the Eastern District of New York has shared in this development, assuming its part therein, and laying down its own landmarks in the *Blocker* case, the *Evergreen Review* case, the *Lavelle* case, and the *Rudd* case.

The Dicksonian unreasonablenesses illustrated by the *Lavelle* case and the *Rudd* case, for example—and to quote the Bench of the court we are saluting here—"don't happen now."

O.J.R.



4. Concept of Ordered Liberty—A New Case. 47 Cal. L. Rev. 238, 243–263 (1959). See also Rogge's: *The First and the Fifth* (pps 59–75); and *A Technique for Change*, 11 U.C.L.A., L. Rev., May, 1964.

*The Criminal Division of the Court**

The First Years

THE FIRST CASE to appear on the dockets of the Eastern District was *U.S.* v. *Harry Severance*, indicted June 14, 1865, for passing a counterfeit $50 treasury note. The docket entries in his case follow a familiar pattern: the defendant was arraigned and entered a plea of "not guilty"; two weeks later he withdrew it and pleaded "guilty." On July 1st he was sentenced to "imprisonment for two years in the State prison at Sing Sing and to pay a fine of one dollar." At that date, and indeed until recently, Federal judges designated the place of imprisonment.

Other indictments in the first docket complain of "larceny from the Navy yard," "making counterfeit money," and "counterfeit fractional currency." Thirty indictments were filed in all, in the court's first year. They were dated June 14th or the 27th, or else December 12, 13 or 18th —indicating that the Grand Jury at that point in the court's history was summoned but twice a year—a far cry from the regular monthly grand juries plus the special grand juries that sit today, and that hand up indictments every week of the year.

The "popular" crimes in the early years of the court were "Passing Counterfeit Money," "Stealing from the Navy Yard," "Carrying on Business of Distiller Contrary to Law," and "Offenses against The Alcohol Tax Laws." Acting as a Lottery Ticket Dealer without a license was a crime that today might be equated with failure to purchase a tax stamp prior to engaging in the business of accepting wagers, and shows that legalizing gambling did not then or now prevent all gambling crimes. "Accepting a Bribe" was prosecuted then, as now. "Assault on the High Seas," and other dangers to admiralty were the dangers to the economic life of the day that the courts discouraged most.

In the first decade of the court's history a total of 282 cases were entered on its docket, or an average of 28 a year. Some were transferred for trial to the Circuit Court and others from it to the District Court.

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* By Cornelius W. Wickersham, Jr., Former United States Attorney, Eastern District of New York; past president of this Association.

The Early 20th Century

BY THE turn of the century, the volume of criminal work in the District had trebled. In January and February, 1900, the Grand Jury handed up 28 indictments for violation of §5392 of the Revised Statutes (a section repealed in 1909) all but one of which were subsequently dismissed and in that one the defendent received a suspended sentence. Including the 28 above, there was a total of 109 cases filed in 1900, and 75 cases filed in 1901.

During the "Roaring Twenties," the National Prohibition Act provided the greatest number of the cases filed, 215 cases being started by the filing of informations in the month of March, 1925 alone. In addition to Prohibition Act cases during those decades there were: Theft from the Mails, Harrison Narcotics Act, Migratory Bird Treaty Act, Counterfeiting and Use of the Mails to Defraud cases.

World War II—Spies and Treason

WORLD WAR II brought spies to Long Island. Some floated in on rafts, at isolated points, from enemy ships; other "cloak and dagger" ways scattered them into our population. Many were captured.

In *U.S.* v. *Herman Lang* et al. Cr. #38425, Lang and 30 others were charged with conspiracy "to act as agents of the German Reich without prior notification to the Secretary of State," and thereby to transmit military information to Germany. It also charged them with conspiracy unlawfully to disclose information affecting national defense. Fourteen of the defendants were tried and convicted. Some were sentenced to two years on the first count, and 18 years on the second. Others received lesser sentences. Some appealed, and the court action was affirmed. *U.S.* v. *Ebeling*, 146 F 2d 254 (2d Circ. 1944). The defendant, Edmund Carl Heine, whose appeal was not determined until after the War, succeeded in having his conviction reversed on the more serious of the counts, 151 F 2d 813 (2d Circ. 1945) on the grounds that the information he transmitted was public information. (Also see 73 F Supp. 558 and 561).

The Lang espionage case was subsequently the basis for a popular book and motion picture *The House on 92nd Street*. Another prosecution for espionage involving one *Grotius* was the basis of the motion picture *Notorious*. This latter individual spent much of his spare time on the

highest point of Staten Island observing ship movements in and out of New York Harbor.

Not all of the crimes prosecuted involved espionage; many men were prosecuted for evasion or attempted evasion of The Selective Service Law. Approximately 150 prosecutions for this crime occurred during the years 1942–1945 and after 1948 about 20 cases a year have been prosecuted for attempted evasion of the Universal Military Training and Service Act.

Treason is one of the gravest of crimes, and because of constitutional limitations, it is rarely charged; but after World War II the government so charged one, *Martin James Monti.* Cr. #41929. The defendant, an officer of the United States Army Air Force, assigned to a base in India, had left without leave, and flew an American P-38 photographic plane to the enemy air base in Milan, Italy, where he cooperated with the Nazi military and propaganda officers.

At the end of the War he was captured, returned to the United States and indicted for Treason. On the advice of his counsel, Lloyd Paul Stryker, Esquire, a distinguished leader of the New York trial bar, he pleaded guilty, and as is required by the constitution, confessed in open court before Judge Byers. Monti tried to soften the impact of his confession by explaining that he was not anti-America, but anti-Russia, which he referred to as the "enemy of God and Man," and that what little harm he did his country was justified by the greater good he was serving. Judge Byers sentenced him to 25 years—and Monti reacted, unsuccessfully, with an attack on his learned counsel, and a series of moves to set aside the sentence. See 100 F. Supp. 209 and 168 F. Supp. 671.

In 1957 occurred the trial of the Russian master spy, Col. Rudolph I. Abel, expertly defended by James B. Donovan, Esquire, chosen for his defense by the Brooklyn Bar Association at the request of the court.

The Abel case was a cause celebre with a collection of spy media, in the best dime novel tradition, consisting of hollowed-out bolts, coins and pencils containing microfilmed messages in code, other coded messages, a false birth certificate, and additional incriminating evidence. Most of this was found in Abel's hotel room when he was arrested on an immigration warrant for his deportation. Abel never took the stand or in any way sought to rebut or explain the evidence against him and the jury found him guilty. The court sentenced him to 30 years. The legality of the search of his hotel room at the time of his arrest on which much of the proof was bottomed was the basis of Abel's appeal to the United States Supreme Court. In a 5–4 vote, that Court sustained the search, and affirmed the conviction. 362 U.S. 217, 984.

In 1963 Abel was exchanged in Berlin for an American, one Gary T. Powers, the U-2 pilot who had been shot down and convicted in Russia, for spying. Subsequently, Abel's attorney wrote a best seller about the case, entitled "Strangers on a Bridge."

Bank Robberies

IN THE MID-50's bank robberies were in style in the District, and caused government much concern. Robin Hoods, and plain "hoods" took to the business (or profession) of relieving banks of their current cash.

On November 29, 1955, just after Thanksgiving and things to be thankful for had passed, and with Christmas just ahead, one *Alfred Nirenberg* and his associate, *Charles Tomaiolo*, with a cool, dependable *Louis Soviero* at the wheel, drove up to the Brentwood Branch of the State Bank of Suffolk to request the Bank's funds on hand. They wore masks and carried a machine gun. But they were not aware of the extent to which the government and the Judges and the good citizenry of the District felt that such crimes should not pay.

Nirenberg was tried first, separately; convicted and his conviction affirmed. 242 F 2d 623. Tomaiolo and Soviero were then tried, jointly, convicted largely on the testimony of the mistress of Nirenberg, and the convictions reversed for errors allegedly committed in the trial. 249 F 2d 683. They were then retried, convicted, and again the convictions were reversed. 286 F 2d 568. Soviero then pleaded guilty; but Tomaiolo went through two more trials, in each of which he was convicted, the last of which was affirmed and certiorari denied. 280 F 2d 411, and 317 F 2d 324; 375 U.S. 856. Government was "all out" for law and order.

Another unlawful combination in the District, concentrating during this period on easy bank money were, *Charles DeCanio* and his strong-arm confederates *Alfonso Tarricone*, *Henry Caron*, *Michael T. Castello*, *Albert F. Hennigan* and *John Joseph Becker*. On June 22, 1954 and again on April 11, 1955 they robbed the same branch of The Manufacturers Trust Company; and on March 22, 1955 they robbed a branch of The Manhattan Company. Indictments and joint and several trials followed; convictions, appeals and affirmances.

The use of confessions in trials, and their challenge on appeal by the defendant, have come before the United States Supreme Court in a long series of cases dealing with the Fifth Amendment's privilege against self-incrimination, the Sixth Amendment's provision for the right to the assistance of counsel, and the Fourteenth Amendment's due process

clause in the field of human rights. See: *Jackson* v. *Denno*, S. Ct. 1774 (June 22, 1964), *Escobido* v. *Illinois* and a number of other cases reported in the same volume.

Because of the limitations laid down by these last cases on the use of confessions in obtaining convictions, the government has had to rely to a greater extent on the testimony of one defendant against a co-defendant. The dangers in this procedure are shown in the dilemmas that have grown out of it. For example, in the *United States* v. *Charles DeCanio* case, above, John Joseph Becker was the actual hold-up man, who confessed, sought to assist the government, and at the trial testified as a government witness against his co-defendant Alfonso Tarricone. Tarricone was convicted, and then the government and the Court was subjected to the following antics and burlesque: first, Tarricone gave Becker a letter and affidavit that he had given false testimony at the trial, under the pressures of the government prosecutor in charge of the case. However, when Tarricone moved on these papers for a new trial, Becker recanted his recantation, alleging that he had been forced to sign the instruments by threats against his life. Tarricone's motion for a new trial was denied by the court. (Cr #44109) When Becker's plea of "guilty" brought him a 7½ year sentence instead of whatever greater leniency he thought he merited for his cooperation in jailing Tarricone for 18 years, he tried to retaliate with the only weapon at his disposal; and he again signed an affidavit for Tarricone recanting the recanting of his recantation; but Tarricone's motion for a new trial, on this too, was denied.

Thus the problems of dependence on the testimony of a defendant against his co-defendant breed other problems out of spite, bribery or fear for life, as represented above, and further in *United States* v. *John Oddo*, an action in the District by the government, for the denaturalization of a defendant popularly known as "Johnny Bath Beach." The defendant and his style and sphere of influence are in the literature of court decisions in 202 F. Supp 899, 314 F 2d 115, 375 U.S. 833.

Present Activity and Procedure

THE COURT-LOAD now includes over 500 criminal cases a year. About 40% of these are cases of theft from the mails and the related crime of forging of government checks stolen from the mail.

Cases involving one phase or another of evasion of the wagering tax law account for about 8% of the cases on the docket. Narcotic violations, alcohol tax violations and income tax evasion each accounts for roughly 5% of the prosecutions and the remainder include: smuggling, theft from interstate commerce, interstate transportation of stolen property, mail fraud, false bomb scares at the Kennedy or La Guardia airports; only very occasionally, however, does this district receive an anti-trust prosecution or a Securities and Exchange Commission complaint.

The great majority (85–90%) of the defendants plead guilty to one or more charges, and so the practice has developed in the District of having all those who are willing to do so waive indictment and plead to an information. Rule 7(b) F.R.Cr.Proc. This procedural short cut, when the guilt is clear, saves the time of grand jurors, prosecutors and law enforcement agents without sacrificing any constitutional rights.

The Brooklyn plan of deferred prosecution was instituted in this district under its first probation officer, Conrad Printzlien. Under this system the complaints against youths who have previously had a good record and who appear to be good material for rehabilitation are held unfiled until it appears that the youth is not going to rehabilitate himself. Meanwhile the youth reports to a probation officer. If after a period of probation it appears that the youth has reformed, the criminal charge is dropped.

By a procedure introduced in the court in 1962, which follows "The Michigan System," a panel of three judges including the sentencing judge considers the case of each defendant up for sentence, debates it, and two of the judges on the panel submit their recommendation to the sentencing judge. Thereby the disparities of sentence occasioned by differing points of view tend to be lessened and the court speaks with a more uniform voice.

The Judges of the District have ever been mindful of the rights of the defendant; and the Office of the United States Attorney, too, does not seek the conviction of an innocent person to deter others in the commission of crime. Hewing to the law, the judges have required the Government to prove its cases "beyond a reasonable doubt." But it can be said, too, that the Judges recognize that justice is due to the victims of crime as well as to those who are charged with its perpetration, and that the District is entitled to law and order.

C.W.W., Jr.

*Nationality and Naturalization**

ONE area of activity in which the United States Court for the Eastern District of New York is one of the busiest in the nation and will probably continue to be such is in the naturalization of aliens.

During the history of this District almost 700,00 aliens have petitioned for and have been admitted to United States citizenship before this Court.

During the ten months in each year when final hearings in naturalization are permitted by statute to be heard, this District holds such hearing, in open court, on Tuesday of each week. As the volume of petitions increases, and backlogs build up, the Court holds two hearings on the same day, and at times, holds hearings on several days in the week.

During World War II years, this Court handled what might appropriately be referred to as a tremendous number of naturalization petitions. In one such year, approximately 45,000 aliens, including persons technically enemy aliens, were naturalized here.

On November 11, 1954, Veterans' Day, the Court held its naturalization session at Ebbets Field, at which time 6982 persons were naturalized, in a mass ceremony.

Next to California, the Eastern District has resident within it the greatest alien population in the country. Out of a national total of 1,338,459 naturalized, on a national basis, during the ten year period from July 1, 1953 to June 30, 1963, the United States Court for the Eastern District of New York handled 141,159 of such cases, representing an average percentage of 10.546 of this total. In that ten year period, the annual percentage in the Eastern District of New York, measured against the national total, ranged from 10% to 12%. When compared to the total of persons naturalized during the same ten year period, in the courts of the State of New York, which have similar jurisdiction to naturalize, this District handled approximately 40% of such proceedings.

We cannot conclude this section of statistics, without saluting the judges of this Court, the staff of the office of its Clerk, and the personnel of the Immigration and Naturalization Service assigned to this District for their devoted and expeditious handling of this tremendous work-load.

* By Edward L. Dubroff, Past President, Association of Immigration and Nationality Lawyers.

*Patent Law and Litigation**

WHEN CONGRESS established the United States Court for the Eastern District of New York it opened a new forum for the disposition of patent suits. Litigants have come to it in the years since 1865 in relatively small but steady numbers.

The first reported suit in the District dealt with the application of several basic principles. The American Wood Paper Company was litigating to protect its patents relating to the manufacture of paper pulp from wood by boiling wood or similar substance in alkali. *3 Fisher's Patent Cases 362-8.* The issue was whether extracted pulp was a new product, since it already existed in the wood, in combined form; or whether, to the contrary, the invention was in the process. One is struck by the Court's grasp of chemistry and chemical process, and by its articulation of principles of patent law which continue, undiminished, in modern practice.

In 1871, the court heard the second reported patent case in the District, *Morris* v. *Shelbourne, 4 Fisher's patent Cases 371.* It began with a motion to restrain. The injunction was denied, but on terms: the court requiring the defendant to post security against loss should the trial go against him. The opening round, apparently, was the last: the case never went to trial.

In the next two cases the City of Brooklyn was the defendant, *Bliss* v. *The City of Brooklyn, 4 Fisher's Patent Cases 596.* The City's Fire Department had adapted a new, patented device for hose coupling without the consent of the inventor. In fact, the Department's men, skilled in its needs, had added a lug to the coupling, and *mirabile dictu,* with the new element it was useful—which it had not been before. The inventor instituted suit.

Again one is struck by the Court's grasp of the principles of patentability, and its ability to comprehend and to evaluate the technological significance in each new invention. Here the court had before it the principle of patentability of new combinations of old elements, and handed down its opinion, as valid now as then, that the use of a useless patented combination, in connection with a new element that renders the whole useful, cannot be punished as an infringement.

Thayer v. *Wales & Dietz, 5 Fisher's Patent Cases 130-133,* was another

* By Dr. Pauline Newman, Patent Counsel, FMC Corporation.

1871 patent suit. The plaintiff had invented a machine for candle-making—a popular and necessary product of that era. The defendant infringed, but defended on many, complex defenses, based on the questions of mechanics involved. The court coped ably with the science.

In 1872 the City of Brooklyn was again before the court as a defendant. The popular patents of the day dealt with public works, such as street paving; and the popular infringements were by the agencies of the City, or its contractors, who were hired to meet the growing pains of the City's villages and local communities. The work of the District Court was thus to pass upon the rights of the individual, for royalties, or damages, as against the needs of a community to move forward at the least possible cost.

As the industrial activities of the country increased, and in particular within the area of the Court, the patent activities of the District increased; and with it the work-load of patent litigation. This ranged from complex inventions and large corporate patent owners, to simple yet important inventions, and the businesses resulting from them. For example, in 1932 the Good Humor Corporation, producer of a simple product with a large market, engaged in extensive litigation in the District, based on its patented process: the inserting of a stick into a frozen confection, for holding it. The Court held the product claims invalid, comparing it to the stick of the Eskimo Pie, of the lollypop, and of the jelly apple. 1 F.Supp. 850.

Invention has become more and more the product of collective effort in research laboratories, and less and less the result of individual effort. At present, about 60 per cent of all patents are owned by corporations. This is testimony not so much to the decline of individual enterprise as to the advanced state of modern technology. As a corollary to this situation, patent litigation has become increasingly complex. This is seen in a sampling of some recent cases before the court.

Note the complexities for example in the litigation *Smith, Kline and French Laboratories* v. *International Pharmaceutical Laboratories*, 98 F.Supp. 899, 1951: an action in which the plaintiff sued alleging unfair competition, and the defendant counterclaimed, charging violation of the Clayton Act and the Sherman Act by seeking to perpetuate the monopoly of an expired patent.

And as further examples:

Stephens Products Co. v. *Fillum Fun, Inc.*, 99 F.Supp. 649, 1951, an infringement action on a toy picture projector, with notice of the action to defendant's customers, with a counterclaim by defendant for unfair competition on this account.

Channel Master Corp. v. *Video TV*, 117 F.Supp. 812, holding a patent on a television receiving antenna invalid, as without novelty and invention.

And coming to the 1960's, we find the court busied with further kinds of patent problems:

Electrolux Corp v. *Dustpak Ltd.*, 215 F.S. 367, 1963: where the proof dealt with the lack of novelty embraced in the constituent elements of the invention, as against the novelty of their union.

Lemelson v. *Renzi Plastics Corp.*, 226 F.Supp. 490, 1963, dealing with jurisdiction over a (one-man) non resident corporation, whose operating head would affix his business card to the office door, giving his Brooklyn phone number, and would lock up.

Laka Tool & Stamping Co. v. *Columbia Pen & Pencil Co.* 224 F.Supp. 741, 1963. This is an interesting case on the resoursefulness of counsel in presenting proof to the court of points that show patentability, or lack of it, and the constant shift of burden of proof, when such matters are introduced as: the Patent Office file wrapper showing full consideration, and the rejection of the application by the Patent Office Examiner, three times; the approval of the application by the Board of Appeals, on review; proof that the article was better than any other in prior art, that it was useful, and enjoyed large sales, met by proof that it was not new and useful, and therefore lacked invention.

And further litigation in the District in patent suits, which shows the litigation in the field in the District to be broad, and inclusive:

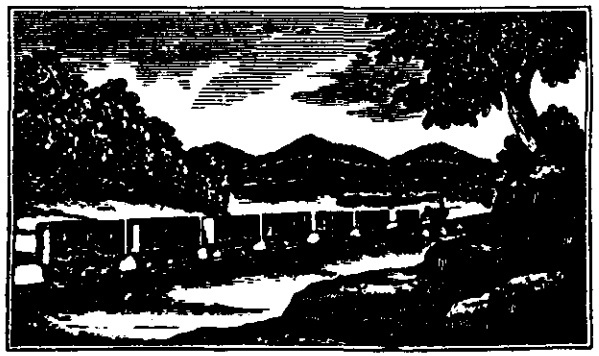
Castro Decorators, Inc. v. *R. H. Macy & Co.*, 181 F.Supp. 493, 1960;
The Norman Co. v. *Lawrence*, 180 F.Supp. 186, 1959;
Eureka Vacuum Breaker Corp. v. *Saltser & Weinsier, Inc.*, 175 F. Supp. 96, 1959;
Filtron Co. Inc. v. *All-Tronics, Inc.*, 198 F.Supp. 392, 1961;
General Industries Co. v. *Birmingham Sound Reproducers, Ltd.*, 194 F.Supp. 693, 1961;
Telephonics Corp. v. *Lindley & Co.*, 192 F.Supp. 407, 1960;
Technical Development Corp. v. *Servo Corp. of America*, 183 F.Supp. 92, 1960;
Searle & Co. v. *Byron Chemical Co.*, 223 F.Supp. 172, 1963;
International Biotical Corp. v. *Federated Department Stores, Inc.* 142 U.S.P.Q. 149, 1964;
Pfizer & Co. v. *Columbia Pharmaceutical Corp.*, 142 U.S.P.Q. 493, 1964.

The Patent Office and the courts appear to hold increasingly divergent

views as to the standards of patentability and validity to be applied to inventions. For example, in the period 1948–54, 53.5% of the adjudicated patents in the published decisions of the district courts were held invalid, and 62.7% of the patents in issue before the courts of appeal were held invalid. The courts of the Second Circuit have earned the reputation of that of a severe judge of patentable invention. Perhaps this is further testimony to the scientific and technological skill of the courts: for the ultimate answer to the question of how much skill an ordinary skilled inventor might be expected to have must depend on how much skill the person has who is applying the test.

For the Court's ability to comprehend and to evaluate the technological significance of the inventions in suit before it, and for its familiarity with the patent law and the public interest that the patent law was designed to foster, we now salute it, on this, its centennium.

P.N.



*The Development of the District and The Growth of the Court**

THE Eastern District of New York is in main an island in the Atlantic Ocean, over 130 miles long, called "The Long Island." The balance of the judicial District is another island nearby: Staten Island.

By 1865, Brooklyn was The Big City on The Long Island, with a population of almost 300,000. Almost two-thirds were native-born and bred, many of ancestors who had first settled Connecticut and Massachusetts Bay Colony, and who had lived to father generations who in turn gave us Sons and Daughters of the Revolution, the Colonial Dames, and the Cincinnati. Brooklyn had background, and station. Soon Brooklyn also had its foreign born: its Italians, who stayed Italian in tongue, dress and manner of living; its Swedes, who had their own community and their homeland customs; its Germans; its Englishmen; and its Irish, who were more than half of all of them.

Its economic basis became diversified. It built warehouses, piers, grain elevators, docks, basins, and shipyards from Greenpoint to Gowanus. The Atlantic Dock Company properties alone, one of the largest depots in the country for receiving, storing, and transshipping grain, were evaluated at three million dollars. Among its other million-dollar industries were sugar refining, distilling, baking, ship building, and the manufacture of hats, machinery, white lead, and cordage. It had the Havemeyer and Elder Company, which paid out over $100,000 a month in wages; the Prentiss Hat Factories, which, by 1870, did an annual business of $3,000,000; Peter Cooper's Glue Factory, and Mayor Kalbfleisch's Bushwick Chemical Works. In Williamsburgh were some of the country's largest breweries: Fries', Schneider's, Liebmann's, and Claus'. By 1860, Brooklyn produced annual products of $34,241,520; in ten years it increased to $60,848, 673.

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* By Sidney Goldstein, immediate past vice-president of the Association for the Eastern District of New York, and presently member of its Board of Trustees; General Counsel, Port of New York Authority.

The rest of The Long Island was largely farm country: there was Queens County, which until January 1, 1899 included Nassau; and there was Suffolk County, and Richmond, better known as "Staten Island." Brooklynites, bound for Suffolk and villages in between, went by stagecoach. In wintertime, the coach was oftentimes put on runners. There was a tavern almost every mile of the road, usually full to the attic, with travellers, although strangers to each other, nevertheless sharing beds. The driver delivered mail, packages, messages, and exchanged gossip; the road had its salesmen on foot, with packs; and peddlers with mules; children screaming greetings at every stop and all along the trip; barking dogs racing the horses; and noisy traffic jams caused by cows, sheep, pigs, turkeys, ducks and geese.

By 1870, Queens County, which still included Nassau, had a population of slightly over 45,000, and the wolves still roamed at large over the sand dunes, and lived in the twiggy tangles that formed an impenetrable wilderness. Suffolk County had almost 47,000, not counting a settlement of Indians. Here, at the end of The Long Island, the people of Brooklyn went for their summer vacations, to get away from their 300,000 fellow-Brooklynites, and to enjoy the deep, hoarse ocean that rolled on, endlessly. Richmond had 33,000.

The Nassau[1] end of Queens County was rural, and Suffolk was wild country.

Richmond had been a slow grower. Its record for the years 1865 to 1870 had been so far below that of Long Island and Westchester, that the State Legislature had appointed a Commission to investigate and report.

As this History is being written, the new $320 million bridge over the Narrows of New York Harbor, to Staten Island, is in the final phases of completion. By the end of 1964 it will permanently link Staten Island with the rest of the District. It will provide an important answer to Richmond County's relatively slow growth, about which a New York Legislative Commission had concerned itself in the Court's early days, and which it attributed, in part, to an unbelievably bad ferry service, with uncomforable boats, badly ventilated, and with unrestrained hooligans and shenanigans.

On May 24, 1883 the Brooklyn Bridge was opened for traffic. It linked the City of Brooklyn and the City of New York, and it was

1. Long Island was once known as Ye Island of Nassau, in honor of the Princes of the House of Nassau, whose lion on the family coat of arms Nassau County adopted, and still uses on the County seal.

proclaimed "The Eighth Wonder of the World[2]." New Yorkers began to leave crowded New York for life in the rural and the aristocratic sections of Brooklyn. Even Queens almost doubled its population. The migrations from Europe settled there, too. By 1890 there were 260,000 of them: almost as large a population as the entire population of Brooklyn twenty-five years earlier.

Then came the 1900's.

In 1909, the Queensboro Bridge opened. In 1910, the Pennsylvania Railroad completed a tunnel from Long Island into New York City. The terrors in a ferry-ride to business every morning and night were now a thing of the past. Kings, Queens and Nassau became the place to live: from aristocratic, monied Brooklyn Heights to aristocratic, monied Nassau estates; from homes on plots to a house and lot—be it ever so humble or grandiose, it was Home. It was the District that John Howard Payne of East Hampton, Long Island, had immortalized in his touching composition "Home, Sweet Home."

Manhattanites moved in ever larger waves into the District. By 1910 the District's population had grown five-fold since its founding in 1865. It passed the two million mark.

In 1865, when the Judicial District was established, it had one Judge: Hon. Charles L. Benedict. In 1910, with a population five times as great, it still had only one judge: Hon. Thomas I. Chatfield. The workload was more than one judge could manage.

An active practitioner in the District, testifying before a House Judiciary sub Committee with respect to the Court's work-load of a criminal calendar, common law calendar, equity calendar, admiralty calendar, bankruptcy calendar, which alone had 850 cases, a naturalization calendar with 639 proceedings pending therein, in each of which the judge was required to personally listen to the testimony of the applicant and his witnesses, referred to the well-known fact that the District's one judge "goes to work at 9 o'clock in the morning, and stays there until 6 o'clock at night; he comes back at 8, and stays until midnight."

On June 25, 1910, a bill providing for an additional judge was passed, and on January 26, 1911 Hon. Van Vechten Veeder began to sit with Judge Chatfield.

2. On July 2, 1964, an official of the United States Department of the Interior referred to it as perhaps the most famous bridge in the world, and the National Park Service officially designated it, in approprate proceedings, as a Registered National Historic Landmark, because of its exceptional value in commemorating and illustrating the history of the United States; and it presented to the City of New York its official, bronze Certificate of Designation accordingly.

And so, after forty-six years, the United States Court for the Eastern District of New York had a Bench of two sitting judges.

War I and War Again

WORLD WAR I brought a new type of caseload to the Court, and a difficult one.

In 1915, before the war came, there were 83 pending cases on the criminal docket; by 1921 the number had jumped to 2,596. At the close of the war, the District had a carry-over of 2,000 selective draft cases. The 18th Amendment, and the Volstead Act added a steady stream of prohibition cases. Civil litigation increased; patent cases increased; war risk insurance and tax cases increased; bankruptcy proceedings[3] increased. By the end of the twenties the business of the court was double what it had been only ten years before.

In 1922, Congress provided for a third judge, by the "temporary" appointment of one, to meet this increased work-load. Thus, the Bench of the court at this point consisted of Hon. Thomas I. Chatfield, Hon. Edwin L. Garvin, appointed in 1918, and the new Judge to be appointed.

On December 24, 1922, Judge Chatfield died. In 1923, Hon. Marcus B. Campbell was added to the Bench of the court to fill the temporary appointment, and Hon. Robert A. Inch was added to succeed Judge Chatfield.

The litigation explosion that came with War I and its aftermath was not manageable by the expediency of a temporary third judge. Calendars of untried cases grew longer. In 1926, the Conference of Senior Circuit Judges tried to deal with the problem. They recommended to Congress that the Bench of the Court be increased by an additional judge, pointing out: "civil suits the past year increased from 5,965 to 7,298; civil suits in which the United States is a party have increased from 1,281 to 1,856; and criminal cases from 3,463 to 3,748."

In 1929, Congress enlarged the Bench of the court by two more judges; in 1935 it made the temporary appointment of 1922 a permanent one, and added a sixth judgeship.

Thus the Bench of the District was brought to six sitting judges,

3. In 1915, there were 867 pending bankruptcy proceedings; by 1921, they had jumped to over 1000.
The work-load decreased only in admiralty proceedings: from 2,410 cases in 1915, to 1,552 in 1921.

consisting of Hon. Matthew T. Abruzzo, Hon. Mortimer W. Byers, Hon. Marcus B. Campbell, Hon. Clarence G. Galston, Hon. Robert A. Inch, and Hon. Grover M. Moscowitz.

Then came the stock market crash, its effect on the general economy, the general depression, the election of "F.D.R." as president, and "The New Deal;" and with it, came new and novel social legislation.

One of the most famous cases in the history of constitutional law was begun in this period in the District when the United States prosecuted the Schechter Poultry Corporation for violating the National Industrial Recovery Act—legislation developed under "The New Deal" to solve the problems of the depression, and to bring the economy into a state of normalcy. The court held the Schechter interests guilty, and in so doing sustained the constitutionality of the so-called "N.I.R.A." *U.S.* v. *Schechter*, 8 F.Supp. 136 (1934). "The Recovery Act," the court held, "is an emergency measure and represents a change in social theory." It is familiar history that the United States Supreme Court disagreed with the District Court. However, in the light of thirty additional years of sociology and litigation, it can be said that the decision of this court, at least on the commerce clause question, represents the view that has ultimately prevailed in our constitutional law.

The Court in Modern Role

FROM 1940 to 1960 the population of Queens jumped; Nassau's jumped, and Suffolk's jumped.[4] This new population explosion turned what were once vast stretches of farmland into suburban communities; and it made urban centers out of what were once suburban areas.

Thus, the eastern end of Long Island lost its farms and summer vacation resorts: its hundreds of thousands of new residents planted little homes instead of potatoes and truck gardens, and created a labor pool to supply new, small industry; and new, small industry, in its turn, created a way of life for the new labor pool.

The phenomenal growth of the area also affected the Long Island Railroad which serviced it: for passenger traffic is today a deficit operation. It had, in fact, and paradoxically so, been ruinous to the Long Island Railroad, which carries more commuters than any other

4. Queens and Suffolk Counties by approximately a half million each; Nassau County just short of a million.

line in the United States[5]—most of them commuters to and from New York City. As a result, by 1949, the Long Island Railroad was in reorganization proceedings, and came out of it, successfully, in 1954. *In re Long Island Railroad Co.*, 122 F.Supp. 942 (1954)

Thus, a railroad which had been organized on the prospect that there was a potential passenger load in persons Boston-bound, who would ride on it to the end of Long Island, then ferry across to Connecticut, then transfer to another line to Boston and points north, eventually found its passenger load right in its own back yard.

The Air Age

THE Eastern District, too, has joined the air conscious areas of the Nation, and has developed the La Guardia and Kennedy International Airports. La Guardia Airport was opened in 1939, on the eve of World War II; and Kennedy Airport (formerly Idlewild, or New York International) was opened during the post-war era in 1948. The City of New York, the owner of these airports, and The Port of New York Authority, the operator of them, have a combined investment in them which now exceeds half a billion dollars.

Kennedy is one of the largest air terminals in the world. It has 4,900 acres: as much as all of Manhattan Island South of 42nd Street. In the center is the 655-acre, $150 million Terminal City, world-renowned as an example of coordinated modern architecture. In 1963, the airport handled 312,363 aircraft movements, and 12,751,573 air passengers through its gates. The airport currently provides employment for approximately 30,700 people, for whom the annual payroll amounts to $230 million.

The air age and this great enterprise have brought their share of litigation to the District. Thus, in 1952, the Village of Cedarhurst disturbed by aircraft, enacted an ordinance prohibiting flights over the Village at altitudes of less than 1,000 feet. Enforcement of the ordinance would have resulted in the closing down of Kennedy Airport. The Port of New York Authority, et als. brought suit in the Eastern District to have the ordinance declared invalid, and to enjoin its enforcement. *Allegheny Airlines, Inc.*, et al., *Port of New York Authority, et al.*, v. *Village of Cedarhurst, et al.*, 132 F.Supp. 871 (D.C.E.D. N.Y. 1955).

5. In 1950 it handled 84,000,000 passengers.

The Court held that the ordinance was unconstitutional because it had invaded the field of air traffic regulation that had been preempted by the Federal Government to the total exclusion of conflicting legislation by the States, and that this included the power to regulate airspace to the extent necessary for aircraft to take off from and land at an airport. The decision was affirmed by the Second Circuit.

There is much litigation in the District arising out of aircraft accidents. For example, following an airplane crash at Kennedy in 1962, some 39 suits arising from the mishap were brought in the District. These suits seek damages in excess of $32 million. Following a 1960 mid-air collision over Staten Island, some 128 suits were brought in the District, seeking damages in excess of $107 million. Another aviation accident which brought litigation before the Court was the 1961 crash of a jet airliner carrying the United States Olympic figure-skating team. Although the accident occurred in Brussels, Belgium, some 29 actions seeking damages of almost $37 million have been brought in the District, on the basis that the passengers had purchased there the tickets for the flight.

Business and Population Goes Up Again

THE situation, burdensome in itself, had been aggravated by the fact that there had been no increase in the number of judges in the Eastern District since 1935. Thus, by 1959, a huge backlog of cases tied up the court's calendars.

The Court's Immediate Past Chief Judge brought the matter to Congress for relief. He recommended the addition of two judges as a solution. As a self-cure, the District was then having the assistance of sixteen visiting judges, supplementing the work of the regular judges of the court. It was strong assistance, but it was only temporary relief. The fact was, as Congress was reminded, that if the eastern district of New York were a separate State, it would be the eighth largest State in the country, and that with but one judge to a million inhabitants —which was the situation—the District had far less Federal judges than other comparable districts.

In May 1961, Congress passed the "Omnibus Judgeship Bill," adding two judges to the Eastern District. President Kennedy appointed Hon. John F. Dooling, Jr., and Hon. George Rosling to the new positions, bringing the Bench to its present eight sitting Judges.

In Conclusion

IT CAN be said that the history of the District has been one of continued growth and change ever since its creation in 1865. Looking back, we see we are moving ahead—slowly perhaps, nevertheless successully toward an adjustment where needed between growth and change, integrating each into a working pattern.

For its contribution to the success of that process, we salute the United States Court for the Eastern District of New York.

S.G.

Interior, U.S. Court House, Brooklyn, New York
1892-1964

The Present Bench of the Court

HON. JOSEPH C. ZAVATT, *Chief Judge*
Appointed 1957,
by President DWIGHT D. EISENHOWER

HON. MATTHEW T. ABRUZZO,
Appointed 1936,
by President FRANKLIN D. ROOSEVELT

HON. LEO F. RAYFIEL,
Appointed 1947,
by President HARRY S. TRUMAN

HON. WALTER BRUCHHAUSEN,
Appointed 1953,
by President DWIGHT D. EISENHOWER

HON. JOHN R. BARTELS,
Appointed 1959,
by President DWIGHT D. EISENHOWER

HON. JACOB MISHLER
Appointed 1960,
by President DWIGHT D. EISENHOWER

HON. JOHN F. DOOLING, JR.,
Appointed 1961,
by President JOHN F. KENNEDY

HON. GEORGE ROSLING
Appointed 1961,
by President JOHN F. KENNEDY

*Caseload of the Court**

THE STATISTICS in the tables which follow have been gathered from the Annual Reports of the United States Attorney General and of the Director of the Administrative Office of the United States Courts. From 1872 until 1939 statistical data on the caseload and work of the federal courts were collected and published by the United States Department of Justice. When the Administrative Office began its operations in 1939, it established a Division of Procedural Studies and Statistics. An opportunity was thus afforded to examine the work of the courts and to review the business of the courts. The annexed tables attempt, by giving volume and type of action over a period of years, to illustrate the ebb and flow of the work in the United States Court for the Eastern District of New York.

Table A enumerates civil cases pending at the beginning of the fiscal year (July 1), those commenced and terminated during the year and the number pending at the end of the fiscal year (June 30), dividing them into private cases and cases in which the United States is a party. Somewhat similar information on criminal cases is included. Table B presents civil cases by nature of suit, divided into private cases and those to which the United States is a party. In Table C appears the number of bankruptcy cases commenced, terminated and pending, and Table D compares the number of civil and criminal cases commenced per judge in the Eastern District to the national average figure in all of the district courts.

This chapter is called *Caseload of the Court* rather than *Workload of the Court*. Even *Caseload* is a misnomer because it is based solely on number of filings, number of terminated cases, and number of pending cases. No account is taken in these figures of the wide variance in types of cases and the time they will consume in trial work and, preliminarily, in pretrial work. The Administrative Office of the United States Courts, recognizing these and other factors, has devised a "weighted caseload" chart which gives "weighted caseload" per judge in all of the district courts. From this, Table E has been made. It compares the "weighted caseload" of this court with the three other district courts having eight

* By Fannie J. Klein, Assistant Director, Institute of Judicial Administration.

judges. Apparently, the weighted caseload per judge in this court was among the heaviest for the year indicated.

Although a substantial portion of judicial time is spent in the courtroom, the trial of suits represents a minor percentage of judicial work. Facilitating the movement of cases to their conclusion also takes many hours over and above the time spent in their trial. The administrative work involved in moving cases through their pretrial procedures is substantial. On an annual basis, each judge of this court spends two full weeks a court year conducting pretrial procedures.

The posttrial work of preparation of opinions, findings of fact and conclusions of law incidental to final decision takes many hours. Work attached to immigration cases is time consuming. Work in criminal cases: the hearings held on violation of probation, hearings to commit for psychiatric observation, petitions for writs similar to coram nobis, the impanelling of grand juries, and disposing of applications to fix, reduce or increase bail also involve many hours of judicial time.

The Sentencing Panel, introduced by Hon. John R. Bartels into the procedures of this court, and described in the section on Criminal Law takes study and time. Presently, the Administrative Office of the United States Courts is studying this plan with a view to recommending it to other district courts.

Thus like many statistics the Tables that follow tell the story of the Eastern District of New York only in caseload, and not in workload. We must remember to read that between the lines.

Year	TOTAL CIVIL CASES				U.S. CIVIL (U.S. a party)				PRIVATE CIVIL CASES				CRIMINAL CASES			
	Pend. beg. year	Commcd.	Terminated	Pend. end year	Pend. beg. year	Commcd.	Terminated	Pend. end year	Pend. beg. year	Commcd.	Terminated	Pend. end year	Pend. beg. year	Commcd.	Terminated	Pend. end year
1874	—	—	301	—	—	—	75	84	—	587	226	—	—	—	14	85
1884	—	—	220	1875	—	—	10	392	—	587	210	1483	—	—	53	50
1894	—	—	286	2366	—	—	30	48	—	265	256	2318	—	—	49	16
1907	3101	309	213	3197	34	24	16	42	3067	285	197	3155	75	72	85	62
1914	3388	489	373	3504	102	6	49	59	3286	483	324	3445	90	107	76	121
1915	4019	705	420	4304	56	31	46	41	3963	674	374	4263	117	100	134	83
1921	1777	1360	703	2434	78	176	77	177	1699	1184	626	2257	2447	1328	1179	2596
1924	4230	3071	1056	6275	644	871	384	1131	3586	2200	672	5144	2288	3130	2429	2993
1926	7275	2911	1237	8949	1432	931	708	1655	5843	1980	529	7294	3463	2608	2363	3748
1929	9353	1755	2305	8803	1323	1061	343	1041	8030	694	962	7762	1240	2343	2485	1098
1934	5099	1455	2414	4140	703	468	558	613	4396	987	1856	3527	648	356	789	215
1939	1352	879	1450	773	643	339	730	252	709	540	728	521	340	344	526	158
1940	773	1515	1228	1060	252	789	674	367	521	726	554	693	158	335	330	163
1941	1060	1272	1109	1223	367	548	482	433	693	724	627	790	163	259	288	134
1942	12231	1062	1176	1109	433	415	472	376	790	647	704	733	134	344	260	218
1943	1109	987	1099	997	376	428	428	376	733	559	671	621	218	556	515	259
1944	997	1007	897	1107	376	517	423	470	621	490	474	637	259	722	724	257
1945	1107	2263	1955	1415	470	1725	1476	719	637	538	479	696	257	526	554	229
1946	1415	2054	1535	1934	719	1509	1068	1160	696	545	467	774	229	543	570	202
1947	1934	1721	1412	2243	1160	986	858	1288	774	735	554	955	202	379	430	151
1948	2243	1383	1435	2191	1288	521	905	904	955	862	530	1287	151	393	398	107
1949	2191	1346	1381	2156	904	613	768	749	1287	733	613	1407	107	345	346	106
1950	2156	1198	1237	2117	749	540	593	696	1407	658	644	1421	106	284	306	84
1951	2117	1266	971	2416	696	458	414	740	1421	808	557	1672	84	261	269	76
1952	2412	1167	1272	2307	740	490	483	747	1672	677	780	1560	76	252	235	93
1953	2307	1251	1073	2485	747	510	429	828	1560	741	644	1657	93	250	242	101
1954	2485	1180	1174	2491	828	496	486	838	1657	684	688	1653	101	371	292	180
1955	2491	1384	1111	2764	838	655	494	999	1653	729	617	1765	180	427	418	189
1956	2764	1185	1361	2588	999	494	706	787	1765	691	655	1801	189	509	489	263
1957	2588	1307	1385	2510	787	519	488	818	1801	788	897	1692	209	500	531	178
1958	2510	1239	1401	2348	818	502	615	705	1692	737	786	1643	178	421	436	163
1959	2348	1254	1827	1775	705	653	785	573	1643	601	1042	1202	163	425	442	146
1960	1775	1201	1155	1821	573	611	616	568	1202	590	539	1253	146	459	415	190
1961	1821	1087	1263	1645	568	526	647	447	1253	561	616	1198	190	397	377	210
1962	1645	1282	1060	1867	447	609	381	475	1198	673	479	1392	374	581	553	402
1963	1867	1527	1463	1931	475	707	672	510	1392	820	791	1421	402	597	595	404
1964	1931	1275	1103	2103	510	559	501	568	1421	716	602	1535	315	483	482	316

TABLE B.

CIVIL CASES FILED IN THE EASTERN DISTRICT OF NEW YORK, BY NATURE OF SUIT

	1941	1942	1943	1944	1945	1946	1947
TOTAL CASES, U. S. & PRIVATE	1372	1062	987	1007	2263	2054	1721
Total U. S. cases	548	415	428	517	538	1509	986
Total private cases	824	647	559	490	1725	545	735
U. S. CASES							
U. S. plaintiff, total	—	—	—	453	1595	1297	7 5
Land condemnation	12	40	44	28	13	3	1
OPA	—	—	12	166	1228	1111	615
Fair Labor Standards Act	—	64	18	38	43	30	16
Other enforcement suits	—	—	—	29	34	4	15
Food & Drug Act	44	43	61	34	49	47	44
Liquor laws	9	14	4	6	1	2	9
Other forfeit., penalties	64	23	10	6	48	12	9
Negotiable instruments	93	89	131	114	143	43	27
Other contracts	13	31	11	8	5	11	16
Other U. S. plaintiff	—	—	—	24	31	34	33
U. S. defendant, total	—	—	—	64	130	212	201
Habeas corpus	13	16	16	15	5	1	5
Tort Claims Act	—	—	—	—	—	—	37
Tax suits	18	11	10	3	5	4	3
Review-Enjoin Fed. agencies	—	—	—	—	—	—	
Other U. S. defendant	—	—	—	46	120	207	156
Other U. S. Cases, plaint. & defend.	282	84	111				
PRIVATE CASES							
Federal Question, total	187	207	142	126	96	135	267
Copyright	27	42	29	2	4	5	7
Employers' Liability Act	—	—	—	51	45	67	104
Fair Labor Standards Act	—	15	27	31	18	14	77
Habeas Corpus	—	—	—		1		
Jones Act	16	34	16	3	8	9	27
Miller Act	—	—	—	1	1	—	1
Patent	48	36	12	7	9	9	15
Other Federal Question	96	80	58	8	10	31	36
Diversity of Citizenship, tot.	204	166	169	125	130	115	151
Insurance	9	14	20	11	4	12	9
Other contracts	36	25	25	18	27	23	40
Real property	2	1	1	1	1	1	
Personal injury—motor veh.	81	52	34	14	28	31	30
Personal injury—other	61	54	73	73	60	44	67
Other divers. of citizenship	15	20	16	8	10	4	5
Private Admiralty	333	274	248	239	312	295	317
TOTAL TERMINATED	1109	1176	1099	897	1955	1535	1412

Note: — denotes that this category was not included in figures for that year

TABLE B. (*Continued*)

	1948	1949	1950	1951	1952	1953	1954
TOTAL CASES, U. S. & PRIVATE	1383	1346	1198	1266	1167	1251	1180
Total U. S. cases	521	613	540	458	490	510	496
Total private cases	862	733	658	798	677	741	684
U. S. CASES							
U. S. plaintiff, total	318	471	396	332	367	338	355
Land condemnation	—	1	—	1	5	3	5
OPA (and other—see footnotes)	173	289*	171*	—	38**	41**	—§
Fair Labor Standards Act	19	21	28	33	35	28	23
Other enforcement suits	46	36	70	72	38	34	53§
Food & Drug Act	24	49	42	36	50	48	48
Liquor laws	2	3	2	3	7	6	5
Other forfeit., penalties	18	20	16	37	30	19	24
Negotiable instruments	11	9	16	35	127	77	95
Other contracts	8	10	17	47	11	36	39
Other U. S. plaintiff	17	33	34	68	26	46	63
U. S. defendant, total	203	142	144	126	123	172	141
Habeas corpus	12	3	8	7	4	3	1
Tort Claims Act	46	44	56	37	37	59	59
Tax suits	6	10	19	16	12	10	15
Review-Enjoin Fed. agencies	—	—	—	—	—	—	15
Other U. S. defendant	139	85	61	66	70	100	51
PRIVATE CASES							
Federal Question, total	297	200	191	333	225	259	253
Copyright	14	5	6	2	10	5	9
Employers' Liability Act	160	85	64	118	90	95	85
Fair Labor Standards Act	26	7	7	5	3	4	5
Habeas Corpus	—	—	—	—	—	1	1
Jones Act	37	31	42	45	33	51	68
Miller Act	3	3	1	3	12	22	25
Patent	29	43	30	27	19	38	22
Other Federal Question	28	26	41	133	58	43	38
Diversity of Citizenship, tot.	233	242	249	297	288	293	318
Insurance	16	16	23	29	21	24	19
Other contracts	58	56	50	53	36	30	29
Real property	2	4	2	2	—	1	—
Personal injury—motor veh.	52	64	62	62	75	53	60
Personal injury—other	96	91	104	139	141	172	194
Other divers. of citizenship	9	11	8	12	15	13	16
Private Admiralty	332	291	218	178	164	189	113
TOTAL TERMINATED	1435	1381	1237	971	1272	1073	1174

* OHE, rent control
** Defense Production Act (Rent control, other)
§ Defense Production Act cases now included under "other enforcements"

TABLE B. (*Continued*)

	1955	1956	1957	1958	1959	1960
TOTAL CASES, U. S. & PRIVATE	1384	1185	1307	1239	1254	1201
Total U. S. cases	655	494	519	502	653	611
Total private cases	729	691	788	737	601	590
U. S. CASES						
U. S. plaintiff, total	393	325	350	332	485	449
Land condemnation	5	3	7	1	—	6
Fair Labor Standards Act	40	37	40	40	56	60
Other enforcement suits	60§	14§	77§	64	74	31
Food & Drug Act	37	36	23	33	27	35
Liquor laws	4	2	5	5	4	2
Other forfeit., penalties	36	18	4	6	10	17
Negotiable instruments	77	60	80	94	161	141
Other contracts	90	102	78	57	121	137
Other U. S. plaintiff	44	53	38	32	32	20
U. S. defendant, total	262	169	169	170	168	162
Habeas corpus	8	12	9	3	1	7
Tort Claims Act	62	63	83	88	115	85
Tax suits	17	22	13	18	12	25
Review-Enjoin Fed. agencies	135	43	30	25	21	33
Other U. S. defendant	40	29	34	36	19	12
PRIVATE CASES						
Federal Question, total	259	230	173	160	207	154
Copyright	11	14	18	25	48	35
Employers' Liability Act	85	76	42	17	36	14
Fair Labor Standards Act	4	2	3	1	3	3
Habeas Corpus	—	2	—	1	—	—
Jones Act	66	36	24	28	16	6
Miller Act	7	10	21	10	23	8
Patent	41	50	31	31	36	38
Other Federal Question	45	40	34	46	45	50
Diversity of Citizenship, tot.	367	383	522	508	318	362
Insurance	13	21	16	20	12	16
Other contracts	44	59	32	51	44	36
Real property	—	2	1	4	4	—
Personal injury—motor veh.	78	73	86	94	101	108
Personal injury—other	221	222	375	328	151	189
Other divers. of citizenship	11	6	12	11	6	13
Private Admiralty	103	78	93	69	76	74
TOTAL TERMINATED	1111	1361	1385	1401	1827	1155

§ Defense Production Act cases now included under "other enforcements"

	1961		1962	1963	1964
TOTAL CASES	1087	TOTAL CASES	1282	1527	1275
Contracts, total	*327*				
Negotiable instr.	138	Total U. S. Cases	609	707	559
Recov., overpay., enforce judgements	47	Total private cases	673	820	716
Other	142	*United States Cases, total*	609	707	559
Real property, total	*13*	Contract	300	292	229
Land condemnation	6	Land condemnation	2	4	2
Other	7	Other real property	12	20	15
Torts, total	*404*	Tort actions	105	179	106
Personal injury:		Antitrust	1	1	2
Emplyrs Liablty Act	15	Detention—prisoners:			
Marine	112	Motions to vacate sentence	3	1	7
Motor vehicle	135	Other	4	3	1
Other	100	Forfeitures and penalties	57	52	48
Personal property dam.	42	Labor actions	61	70	68
Statutory actions, total	*342*	Tax suits	41	63	51
Antitrust	14	All other	23	20	30
Civil rights	3	*Private Cases, total*	673	820	716
Deportation	2	Contract	168	216	151
Detention—prisoners:		Real property	2	2	6
Motions to vacate	1	Fed. Empl. Liability Act	18	14	20
Other	2	Marine personal injury	142	200	168
Forfeitures, penalties	101	Motor vehicle persnl injury	83	101	90
Labor laws	76	Other personal injury	91	94	61
Patent, copyrt, trdmk	97	Other tort actions	29	21	20
Tax suits	23	Antitrust	6	4	6
Other	23	Detention—prisoners	3	5	13
Other actions	1	Copyrt, patent, trademark	92	117	107
		All other	39	46	74
TOTAL TERMINATED	1263		1060	1463	1103

TABLE D.

EASTERN DISTRICT OF NEW YORK—
CASES COMMENCED PER JUDGESHIP

Year	Judges	TOTAL CIVIL CASES		PRIVATE CIVIL CASES		CRIMINAL CASES (less immigration)	
		E.D.N.Y.	Nat'l Average	E.D.N.Y.	Nat'l Average	E.D.N.Y.	Nat'l Average
1941	6	212	164	121	82	43	153
1942	6	177	168	108	77	57	161
1943	6	165	158	93	58	88	174
1944	6	168	169	82	56	115	184
1945	6	377	295	90	57	86	176
1946	6	342	321	91	70	89	142
1947	6	287	271	123	109	60	134
1948	6	231	205	144	117	56	123
1949	6	224	238	122	121	55	123
1950	6	200	222	110	113	44	116
1951	6	211	204	135	111	41	106
1952	6	195	236	113	126	38	112
1953	6	209	261	124	146	39	114
1954	6	197	210	114	127	57	103
1955	6	231	212	122	126	66	104
1956	6	198	225	115	135	77	102
1957	6	218	236	131	151	76	105
1958	6	207	259	123	167	65	108
1959	6	209	215	100	129	64	108
1960	6	200	221	98	133	71	107
1961	8	136	173	70	108	46	86
1962	8	160	185	84	118	53	89
1963	8	191	193	103	123	59	90
1964	8	159	207	90	134	57	89

TABLE C.

BANKRUPTCY CASES, EASTERN DISTRICT OF NEW YORK

Year	Pending (begin. fiscal yr.)	Commenced	Terminated	Pending (end of fiscal yr.)
1902	—	302	287	—
1907	—	223	231	—
1914	806	653	503	856
1917	867	601	500	968
1923	557	247	237	567
1927	2009	1031	933	2107
1935	2292	1881	2058	2115
1939	2112	2091	2089	2114
1943	1887	1656	2265	1278
1948	330	433	274	489
1953	797	698	729	706
1958	853	886	822	917
1963	1028	1138	996	1170
1964	1170	1172	1053	1289

TABLE E.

WEIGHTED* CASELOAD PER JUDGESHIP

Fiscal Year 1963

DISTRICTS	No. of Judgeships	Weighted Caseload Per Judgeship		
		Civil	Criminal	Total
Michigan (Eastern)	8	180	59	239
New Jersey	8	140	41	181
New York (Eastern)	8	201	43	244
Pennsylvania (Western)	8	163	29	192

* See Study of the Workload of United States District Judges, 1960 Annual Report of the Director of the Administrative Office of the United States Courts at 127–1949. See also 1962 Annual Report at 118–24.

*The Future Out of the Court's Past**

AS A court grows in age it grows in maturity. Any bench of today could not be what it is were it not for the experience and culture that preceded it.

When an articulate jurist said that "law is philosophy, teaching by examples" he only adapted what many in other fields had said before him. As Shakespeare had Warwick say to Henry IV: "There is a history in all men's lives, the which observed a man may prophesy the chance of things as yet not come."

It has been said of a courthouse that it is a place where all the mistakes of the past are tried over and over again.

Thus the past is the basis of decision: the courts think about what they once thought, and whether it ought ever to have been so thought.

A court looking backward is actually preparing a way for the future. Every social question, every question in ethics seeks an answer or a solution in the courts. Study any report on social questions: omit the dates, and the persons involved, and it will read like a statement of the present. A famous churchman cried out in his lifetime against benefits to peoples not prepared for them by education. A hundred years ago the African Methodist Episcopal Church spoke out against crime and vice in its group. The present "War on Poverty" is only a catchier phrase for efforts to meet a historic condition. Over one hundred and fifty years ago the wealthier classes were called upon to help relieve destitution. Schools were called upon to provide free industrial education. The "Bread Act" was enacted; the imprisonment of debtors for sums less than twenty-five dollars (N.Y.) was forbidden; the young were prohibited to congregate in the oyster cellars to drink, smoke and swear; and sources of crime, in general, were discouraged by vigilantes through their Societies for the Prevention of Something, and their Associations for the Advancement of a Desideratum. (Lectures on the Growth & Development of the U.S., Chapter on Relief, p. 321, et seq., American Educational Alliance, Wash., D.C.)

The prior sections of this History were intended to set forth in an orderly fashion, properly associated, what is well-known: namely,

* By Bernard A. Grossman, past president, Federal Bar Association of New York, New Jersey and Connecticut.

that the Eastern District of New York has a history in every important branch of Federal law; that in its past it dealt with the realities of that past, and that in its present it deals with the realities of the present.

It is linked to its neighbor, the Southern District of New York, by bridges and tunnels to the point where both Districts are one as a matter of geography, linked to each other by an almost common population, working in the one and living in the other: thus the two Districts have become unidentical twins, supporting each other's welfare.

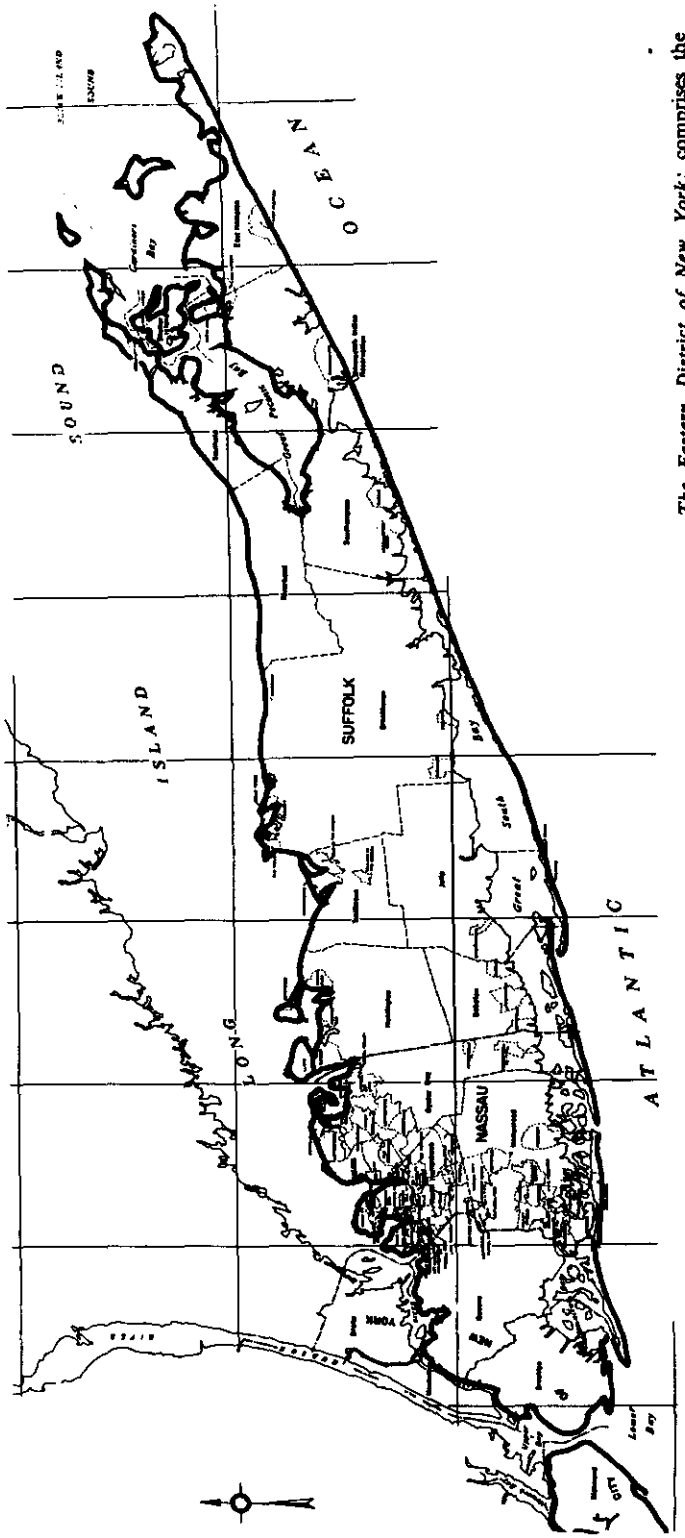
The Eastern District has been a protective brother to the Southern District—for any power that was in a position to occupy Long Island would be able to control New York. Thus, during the War for Independence, the Eastern District was the granary for the Southern District, and its reservoir of foodstuffs and meats; during the War of 1812, and the Civil War it was the area which sent out brigs and brigantines, schooners and merchant sloops, whalers, pirates and privateers and pleasure boats to superintend the waterways in and about the Eastern and Southern Districts. In War I and War II, like the skin protects its body from infections, it protected the coastlines of the Districts from infiltration.

Through its homogeneity, the people in the City of Brooklyn met in 1894 to consider a proposal to consolidate with the people of the City of New York. On January 1, 1898, a charter went into effect, joining that part of the Eastern District known as Kings, Queens and Richmond Counties with that part of the Southern District known as New York and Bronx Counties into a Greater City known thereafter as the Greater City of New York.

Thus within the one corporate City there are two Federal judicial districts, each of which carries a similar cross-section of litigation, and manages it effectively, except that one has more of it, but has three times as many judges to handle it. Yet the Eastern District, with the smaller case-load, as a separate unit is larger than most other Federal districts across the land, and it carries a larger case-load, involving greater sums, with more intricate questions of fact and law than most other Federal Districts across the land. Measured by population, the Eastern District of New York is larger than the eighth largest State in the Union.

The Bench in these linked Districts, in its ever changing composition, seeks to contribute to the peoples of their Districts thinking and understanding of the controversies of the day from their experience as a Bench, and from the culture of those who preceded them thereon.

B.A.G.



The Eastern District of New York: comprises the counties of Kings, Nassau, Queens, Richmond, and Suffolk and concurrently with the Southern District, the waters within the counties of Bronx and New York.
Court for the Eastern District shall be held at Brooklyn.

To Administer Justice on Behalf of all the People

The United States District Court

for the

Eastern District of New York

1965-1990

By Jeffrey B. Morris

Sponsored by The Federal Bar Foundation

The sketch of the Brooklyn Courthouse was drawn by Byrd S. Platt for Judge Jack B. Weinstein and is reprinted with his permission. Similar permission to reprint the watercolor of the Uniondale Courthouse was given by Circuit Judge George C. Pratt.

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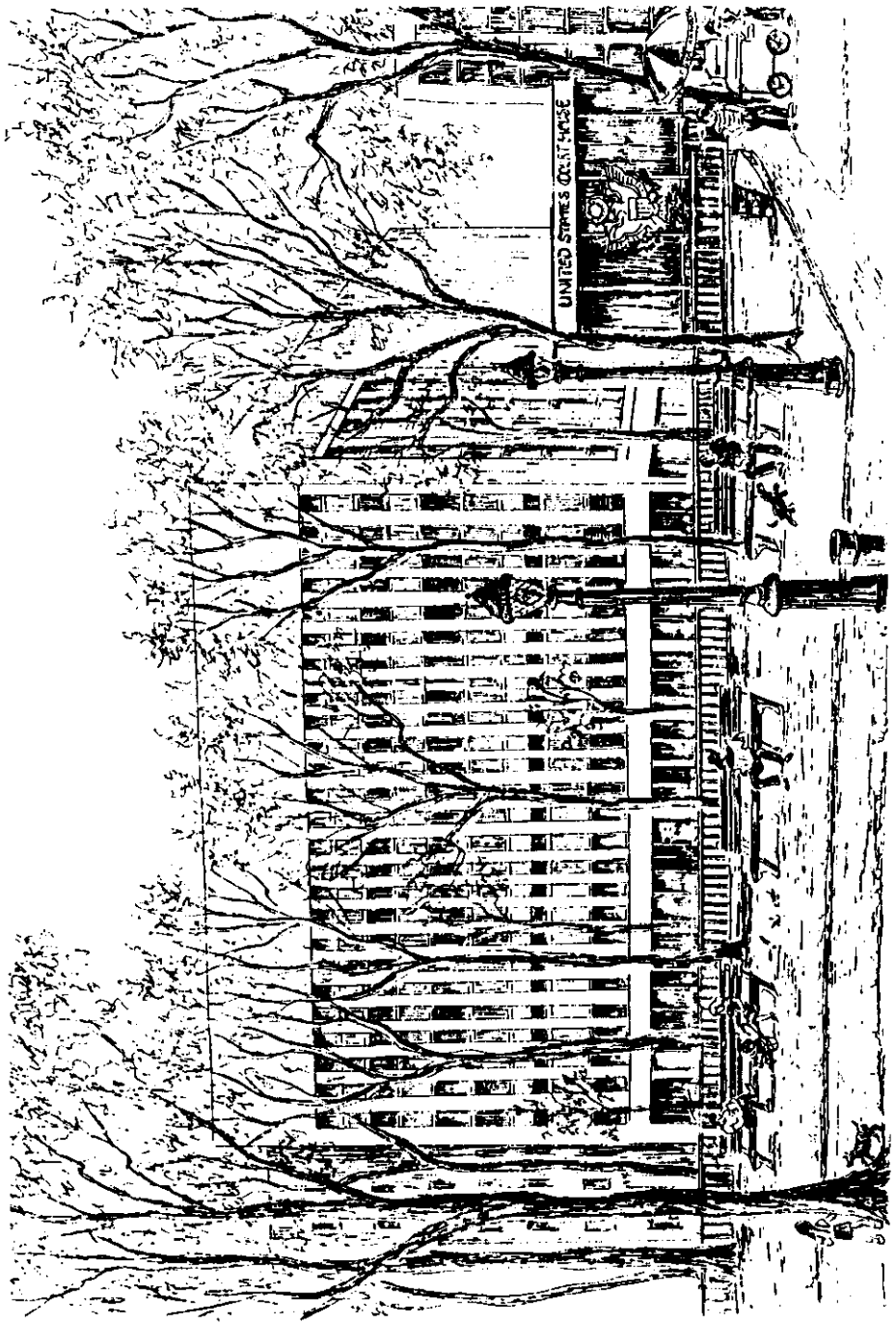

United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Uniondale Division
Hauppauge Division

One Hundred Twenty-Fifth Anniversary
1865 - 1990

December 31, 1991

Re: History of the Court March 22, 1965 to March 22, 1990

Dear Reader:

On behalf of the Board of Judges, I want to thank the many persons who contributed their time and effort in the preparation and production of this history of our Court covering twenty-five years and supplementing the original history written on the occasion of its one hundredth anniversary on March 22, 1965.

In particular, the Board is especially grateful for the assistance and support of the Federal Bar Council and its president Bernard Nussbaum, Esq. and the Federal Bar Foundation and its president Thomas Evans, Esq.

The growth of our District in terms of population and the Court's business over the past twenty-five years has been phenomenal and there is every indication that such growth will continue in the years ahead. Hopefully, Congress willing, the growth of our Court and its supporting personnel and facilities will grow proportionately in order that we may continue to dispense prompt justice to all those needing the same.

Sincerely,

Thomas C. Platt

THOMAS C. PLATT
Chief Judge

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Appointed 1967, by President Johnson

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Appointed 1977, by President Carter

HON. EUGENE H. NICKERSON
Appointed 1977, by President Carter

HON. JOSEPH M. McLAUGHLIN
Appointed 1981, by President Reagan

HON. ISRAEL LEO GLASSER
Appointed 1981, by President Reagan

HON. LEONARD D. WEXLER
Appointed 1983, by President Reagan

HON. EDWARD R. KORMAN
Appointed 1985, by President Reagan

HON. RAYMOND J. DEARIE
Appointed 1986, by President Reagan

HON. REENA RAGGI
Appointed 1987, by President Reagan

HON. ARTHUR D. SPATT
Appointed 1989, by President Bush

HON. JOHN R. BARTELS, Senior Judge
Appointed 1959, by President Eisenhower

HON. JACOB MISHLER, Senior Judge
Appointed 1960, by President Eisenhower

HON. MARK A. COSTANTINO, Senior Judge
Appointed 1971, by President Nixon

HON. EDWARD R. NEAHER, Senior Judge
Appointed 1971, by President Nixon

HON. HENRY BRAMWELL, Senior Judge
Appointed 1975, by President Ford

Preface

On the occasion of the centennial of the United States District Court for the Eastern District of New York, the Federal Bar Association of New York, New Jersey and Connecticut published "A History of the United States Court for the Eastern District of New York", edited by Samuel C. Duberstein. Shortly after the commemoration of the 125th anniversary of the Eastern District, its Board of Judges asked me to prepare a history of the work of the Court during the intervening quarter-of-a-century. This study resulted from that request. With the exception of necessary background, I have, consistent with the charge, limited discussion to the period between March 22, 1965 — the centennial of the first session of the Court — and March 22, 1990. Publication was assured by the assistance of the Federal Bar Council.

While the substance of this work is the responsibility of the author, he profited from and wishes to acknowledge with appreciation the assistance of each of the active, regular judges sitting in the spring of 1990, as well as that of the Chief Judge of the Bankruptcy Court, Conrad B. Duberstein; the Chief Magistrate Judge, A. Simon Chrein; the Clerk of the Eastern District, Robert G. Heinemann; the District Executive, Bruce Barton; and the then Deputy Chief U.S. Probation Officer, Stephen J. Rackmill. The libraries and librarians of Brooklyn Law School and the Touro Law Center were valuable resources, and the research assistance of Charles Glaws, a 1991 graduate of Brooklyn Law School, was extremely helpful.

The title of this work, "To Administer Justice on Behalf of all the People" is a paraphrase of a remark make by Judge Jack B. Weinstein in his statement, "Keep the Federal Courts Open For All Our People", made to the Federal Court Study Committee of the Association of the Bar of the City of New York on January 30, 1990.

The Eastern District, 1965-1990: An Overview

ON THE 22nd of March, 1990, the U.S. District Court for the Eastern District of New York observed its 125th anniversary with a special session in the ceremonial courtroom in the U.S. Courthouse in Brooklyn. Occurring but a few months after the commemoration of the bicentennial of the creation of the federal court system, the Brooklyn ceremony was a further reminder not only of the importance of the federal court system throughout the history of the United States — in the enforcement of federal laws and in ensuring a forum to resolve disputes between citizens of different states — but also of the striking changes in their functions and remarkable growth in their importance. Sixty years ago the federal courts largely dealt with matters of admiralty and maritime law, patent and copyright cases, sporadic bankruptcy administration, the enforcement of the federal criminal law along with diversity cases. It has been for not much more than the twenty-five years focused upon here that the federal courts have been called upon consistently to review the constitutionality of the actions of state and local governments and to act as a sort of ombudsman for the unrepresented and underrepresented groups and individuals in the American political process. The great changes in the work of the federal courts in the past 25 years may be highlighted by a brief glimpse backward at the work of the Eastern District over its first century.

The First Century

THE U.S. District Court for the Eastern District of New York was created by severing two islands, Long Island and Staten Island, from the Southern District of New York, America's busiest district, which then extended far up the Hudson. For some years the business of the Southern District, spawned in the great port and centers of commerce of the City of New York (then consisting only of Manhattan), had become too great for its able judge, Samuel Rossiter Betts. The caseload was managed with the assistance of visiting federal judges from Connec-

ticut and Vermont, who visited New York a few months each year to help out (and received extra compensation for their work). Congress worked out a more permanent solution through the division of the Southern District, giving to the judge of the newly created Eastern District concurrent jurisdiction over the waters of New York and expecting as well that he would cross the still unbridged East River to assist with criminal matters.

The early judges of the Eastern District, sitting in a district in which only one county, Kings (Brooklyn), was heavily populated, handled maritime and diversity cases as well as minor criminal matters arising on Long Island and Staten Island, such as larceny from the Navy Yard or passing counterfeit money, as well as maritime and criminal matters from the Southern District. It would be more than a generation until the burgeoning of commerce on Long Island — warehouses, shipbuilding plants, grain elevators — made it impossible for the judge of the Eastern District to give much assistance to the Southern District.

Construction of the Brooklyn Bridge, which opened in 1883, and of the Queensborough Bridge, which opened in 1909, stimulated business, and the migration of population generated the need for a second judgeship in the Eastern District, created in 1910. The continuing growth of population and commerce within the district, as well as the greater demands placed upon the federal courts throughout the United States to regulate interstate commerce, enforce prohibition, and cope with the bankruptcies generated by the Great Depression, led to the creation of yet more judgeships. By 1940, the year the 75th birthday of the district was commemorated, it boasted six judgeships.

The following quarter of a century was marked by the enormous growth of three of the district's five counties: Queens, Nassau, and Suffolk. Farmland became suburbs. Suburbs became urban centers. Kings County was not gaining population, yet had it been severed from the rest of New York City, it would have been among the nation's five largest cities. By 1960 the Eastern District with six million people (and only eight judges) was larger in population than 43 states.

By its centennial, the staples of the 19th century caseload were still important, but the Court's docket now encompassed large numbers of cases involving government regulation of the market place, tort actions against the United States, cases arising out of other statutes, and prosecutions in number for crimes such as bank robbery, use of the mails to defraud, and possession or sale of narcotics. Glancing at the booklet published at the time of the Court's centennial, one sees that of the 25 pages devoted

to jurisprudence, five pages were given over to admiralty and maritime cases, four to bankruptcy, six to criminal (of which more than half dealt with World War II prosecutions), 3½ to patent matters, one to naturalization, one to cases involving aviation, and but 2¼ to "civil rights." Those proportions were by no means an inaccurate representation of what appeared important about the work of the Court in 1965. They do not, however, bear any resemblance to what is significant about the work of the Eastern District today.

1990 Compared With 1965

NOT ONLY is there a strong contrast between the work of the Eastern District in 1965 and that of 1990, there is one in the administration of the Court. In 1965 the Court, which throughout its history always had been quartered in Brooklyn, had just moved into a newly built courthouse. The federal office building with its eleven courtrooms appeared to have ample space for the eight district judges and the one Court of Appeals judge with chambers there (Leonard P. Moore), as well as the two referees in bankruptcy and two U.S. Commissioners.

In 1990 there were eleven regular and two senior judges (as well as two judges of the Court of Appeals) located in three courthouses — in Brooklyn, Uniondale and Hauppauge. There was one vacant judgeship. One judge was located in Hauppauge; two regular, one senior, and two Court of Appeals judges in Uniondale. For the most part, cases arising in Nassau were handled in Uniondale; those arising in Suffolk, in Hauppauge. Eight regular judges and two senior judges were quartered in the Brooklyn Courthouse, which had become so crowded that the bankruptcy judges were located half a dozen blocks away.

Between 1965 and 1990 the caseload of the Court tripled. Furthermore, the nature of the cases decided by the Court had changed greatly. Cases involving drugs had become a more important part of the docket because of increased traffic in narcotics, the policies of Federal law enforcement officials, and because Kennedy and LaGuardia Airports — important ports of entry for drugs — were both located in the district. The Eastern District had also become the venue for important criminal (and civil) actions involving New York's five organized crime families. Moreover, beginning about 1974 the district saw a number of important prosecutions for political corruption.

The changes on the civil side have been even more remarkable. In 1965, the civil docket was largely made up of admiralty, bankruptcy, patent, trademark and other cases involving federal laws regulating the marketplace. Throughout the period 1965-1990 there was a vast increase in important constitutional litigation. Much of this occurred in litigation brought to vindicate the civil rights of blacks, women, and other minorities. Some occurred in litigation brought by aliens, the learning disabled, the homeless and others, to assert rights to "the new property," benefits from government programs such as Social Security. Some occurred as the result of attempts to improve or shut down institutions housing prisoners, the mentally ill, and the mentally retarded. Some occurred in criminal prosecutions. Judges came to craft extraordinary remedies, probably unimagined 25 years ago, when dealing with such matters as the proper qualifications for firefighting positions, staffing ratios in institutions for the mentally retarded, and the reapportionment of county legislatures.

Non-constitutional cases of great significance arose involving the environment and bank failures. There were a great number of mega-cases (cases with multiple plaintiffs and/or multiple defendants) involving either plane crashes or the devastating impact of chemical agents and products. An unusual number of cases were decided with implications for the United States' international position: high profile proceedings for the extradition of terrorists, cases involving foreign spies, diplomats, and airlines. In short, the work of the Eastern District during the past 25 years, like that of the federal courts throughout the country (but more so), was a vital part of the nation's struggle for equality, its growing attention to individual liberties, its economic development, and its international position.

Such developments were the result of the impact of the Supreme Court's interpretation of the Fourteenth Amendment, laws passed by Congress, the greater ease with which litigation in federal court could be brought, because of the efforts, scholarship, imagination and courage of bench and bar, and the political process itself. The Supreme Court did not itself come to terms with the winds of equality it had unleashed by its desegregation decisions, the logic of its extension to other regions and other groups, and its expectation that the federal judiciary would become a major force extending those rights, until the 1960s. Then, the High Court became increasingly willing to modify doctrines which had limited access to the federal courts, opening up the federal courts to the consideration of law suits and legal issues which had not been there before.

Rules permitting standing to sue were greatly liberalized. The Federal Rules of Civil Procedure were changed and interpreted to facilitate the bringing of class actions. The Court revitalized Section One of the Civil Rights Act of 1871 (Section 1983 of title 42 of the U.S. Code), which became the prime vehicle for testing the actions of state and local officials, the means by which the Fourteenth Amendment could be invoked on behalf of prisoners, mental patients, tenants, welfare recipients and others.

The recognition of constitutional rights by the Congress, its creation of new statutory rights, and its reliance upon the federal courts for their enforcement was a critical element in the change in their work. The Civil Rights Act of 1964, which dealt with discrimination in access to public accommodations, voting and jobs, was a milestone. It was followed over the next decade with over a hundred important laws expanding federal rights and federal power over such areas as the environment, the treatment of the handicapped and consumer protection. Having the support in the 1960s of both the federal executive and legislative benches, federal judges became increasingly willing to exert judicial power. The first subjects of the power were segregated schools and malapportioned legislatures. But as judges were confronted by obstructive or timid state and local political officials, they moved beyond the traditional naysaying of judicial review to create and impose their own desegregation and apportionment plans. If such bold assertions of judicial power to vindicate constitutional rights were controversial, they also were usually accepted. Soon they would be followed by the creation by federal judges of ample affirmative relief to remedy conditions in prisons, mental hospitals and other programs. This process of expansion of individual rights coupled with the assertion of judicial power to protect those asserting those rights, was much in evidence in the Eastern District where it was not appreciably slowed by changes in the composition of the Supreme Court.

These developments not only changed the type of cases the federal courts were hearing and the results they rendered, but led to a great increase in the number of cases coming before the federal courts. Between 1965 and 1990 the number of civil cases filed in the federal district courts nationally increased threefold. If the criminal caseload did not change much between 1965 and 1990, the complexity of those cases greatly increased. To meet such pressures Congress greatly increased the number of judgeships, provided for increases in judges' staffs and transformed the U.S. Commissioners and referees in bankruptcy into U.S. magistrate judges and bankruptcy judges, with greater judicial responsibilities.

The Eastern District, 1965-1990

THE TRANSFORMATION of the work of the district court was not solely the result of broad national trends. Developments within the Eastern District itself impacted significantly upon the work of the court. Understanding this requires attention to the characteristics of the district itself and the changes within it over the past twenty-five years.

Without slighting Staten Island, it is, of course, the other island in the Eastern District which gives it its distinctive characteristics. The largest island in the continental United States, Long Island stretches from the sand dunes of Montauk to New York harbor. When one begins the 118 mile drive from East to West across the "Island," one commences in the salt marshes, farms, vineyards and great summer homes of Suffolk county. The secluded estates, suburban houses, shopping malls and industrial parks of Western Suffolk and Nassau county then appear. Next comes the Borough of Queens with its many distinctive communities — suburban to the East, more crowded, industrial and ethnic as one approaches the East River. Then you reach Brooklyn, a great city in its own right, with sections as different as Bedford-Stuyvesant, Coney Island and Brooklyn Heights. From Brooklyn one leaves Long Island by crossing the magnificent Verrazano Bridge over the Bay of New York and reaches the hills of Richmond and the quieter, more leisurely pace of Staten Island.[1]

In 1965 Brooklyn and Queens were, as they are now, very much parts of the world's greatest city, generally sharing with Manhattan and the Bronx the pressures of dense, urban life. By 1965 Nassau County, which for two decades had been one of the most rapidly developing counties in the United States, had just about run out of space for development. Its population stabilized, Nassau was a quintessential suburb.

In 1965 Suffolk County was still largely rural — a land of farms and vacation homes. That great unifier, the Long Island Expressway, those seventy miles of concrete passing through the heart of the Island, had reached the Suffolk County line only three years before. It would not be completed to Riverhead until 1972. But at the other side of the district, Staten Island, previously connected to the rest of New York City only by ferry, was now reachable by automobile with the opening in 1964 of the Verrazano Bridge.

The most dramatic changes would occur in Suffolk County. Its population would double as homes would be raised in cow pastures and

potato fields. Industrial parks, office building complexes and shopping centers filled in other open land.[2] The spread of commerce and the construction of housing stimulated demand for additional police and fire protection, more electric power and waste removal. What had happened a generation before in Nassau was repeated in Suffolk: growth marked by bitter controversy, skyrocketing costs, patent mismanagement and political corruption.[3] In a period of growing national concern about the environment, such matters were felt even more keenly in Nassau and Suffolk Counties, caught as they were between pressures for growth and the desire for serenity.[4] This led inevitably to litigation.

In 1972 Nassau and Suffolk became the first suburban region to be designated by the Census Bureau as a separate economic district,[5] a separate Standard Metropolitan Area. By 1980 Nassau and Suffolk Counties had a larger population than nineteen states. With the growth of defense, hi-tech, manufacturing and service industries, more and more residents of Nassau and Suffolk stayed at home to work. But, ironically, as the counties became more independent of New York City, they came more closely to resemble Brooklyn and Queens in density of population, traffic and other urban problems. (While there was rapid growth on Staten Island, it did not become urbanized.)

Brooklyn and Queens, connected to the Bronx and Manhattan by seven bridges and two tunnels, shared with the two other boroughs the agonies and ecstasies of the great city — its fiscal crises, the decline of its great port and manufacturing sectors, the strengths and weaknesses of its infrastructure, civil servants and educational system, the problems of in and out migration.

We might suggest ten factors internal to the Eastern District which contributed significantly to the richness of the docket of the U.S. District Court:

FIRST, the two great airports, Kennedy and LaGuardia (and MacArthur as well), which, on an almost daily basis, yielded potential candidates for prosecution for importation and possession of heroin, cocaine, and other controlled substances,[6] provided important labor and commercial disputes, and, sadly, plane crashes spawning multiple tort litigation;

SECOND, the Long Island Railroad, which became during this period a reliable commuter line carrying 250,000 daily, so vital to the work patterns of Long Islanders that its frequent labor troubles were front page news and produced frequent visits to the court for injunctions;

THIRD, the international magnetism of New York, which drew to the Eastern District (and the Southern District as well), not only immigrants seeking naturalization, but illegal aliens who could be deported, criminals on the lam, and terrorists seeking the anonymity of the City;

FOURTH, the political culture of the area, which, some have argued, seems to attract to political life a somewhat higher percentage of individuals susceptible to bribery and graft than at least some other parts of the U.S.;

FIFTH, the selection by leading members of organized crime families of Brooklyn and Queens as important places of business, and of all five counties as locations for their residences;

SIXTH, the size and scope of the government of the City of New York, whose services and personnel practices became the object of frequent and important litigation in the Eastern, even more than in the Southern District of New York;

SEVENTH, the rapid development of Suffolk County;

EIGHTH, the high quality of life in Nassau County — its physical beauty, recreational attractiveness and low population density, attracting upper-middle class residents and owners of second homes (including many attorneys), who took an activist role in protecting its environment from potential threats;

NINTH, the growing professionalization of the U.S. Attorney's Office for the Eastern District;

FINALLY, the proximity of important public interest law firms and lawyers, as well as of Wall Street firms ready to undertake *pro bono* work, which undoubtedly made more feasible civil rights and environmental litigation.

The Jurisprudence of the Eastern District, 1965-1990

The Old Staples

MOST OF THE GRIST for the mill of the Eastern District during the first half of its history — admiralty and maritime, patent, and diversity cases — have greatly receded in importance.

Take *Admiralty*: At one time, the 350 mile coast line of the district and, especially, the presence of the port of New York, brought to the Court continually interesting and important questions involving accidents which caused damage to vessels, to cargo, or injuries to those who did work traditionally associated with ships and shipping. There was litigation arising out of the collisions, groundings and sinkings of oceangoing vessels, tugboats, and yachts. There were suits brought by sailors and longshoremen for their wages or for damages due to injuries. In wartime the Court passed upon the seizure of foreign vessels as prizes.[7]

The decline in the number and significance of admiralty and maritime cases mirrored the decline in the importance of shipping and, more particularly, the decline in the importance of the port of New York.[8] This is not to suggest that maritime cases were no longer brought nor that those that were were devoid of interest. Because recovery under admiralty law is easier than in ordinary tort law and the benefits usually greater than for a state workman's compensation claim, victims of accidents in any way related to vessels attempt to argue that they are "seamen" or "maritime workers," thus coming within the scope of the Jones Act, a federal law permitting the equivalent of a negligence claim for damages sustained as the result of an unseaworthy condition of the vessel.[9] In *Wilburn v. City of New York*[10] the issue was whether a New York City employee, who had for sixteen years worked at the Whitehall terminal in a position classified as "deckhand," was a "seaman" within the purview of the Jones Act. Wolbert had been injured while assisting in the tying up of the Staten Island ferry on a snowy and icy night. As "deckhand," his primary duties had been to open and shut the gates of the ferry for passengers loading and unloading, to handle lines to secure the boat's docking, and to clean the ferry. The Court held that Wolbert was not a

"deckhand" comparable to those serving on the ferry boats, who had the risk and hazard of first seeing to the passengers when the ship was in trouble. He was, instead, more akin to a laborer or a harbor worker, and, therefore, not covered by the Jones Act.

Litigation occurred exemplifying the perennial lawlessness of the port of New York. *Leather's Best, Inc. v. Tidewater Terminal, Inc.*[11] was a suit to determine liability for a container imported from Germany with 99 bales of leather worth almost $50,000. It had been unloaded onto the piers and left in a large terminal area, disappearing overnight. The container was found the next day twenty-five miles away. The leather was never recovered. The importer sued both the shipowner and the terminal owner. Although maritime in nature, the suit was resolved by principles of tort law. Noting that "theft has become so commonplace on the waterfront that the New York Courts will not permit revocation of a watchman's license for mere connivance in a small theft,"[12] the Court held the terminal company liable for the negligence.

Maritime cases have always made some of the most evocative reading in court reports. It is not difficult, for example, to see in one's mind that quiet and clear summer evening a quarter of a century ago, when the cement barge *Janet* loaded with 232 tons of cement went down in the Narrows at the point where the Verrazano Bridge now spans the entrance to New York Harbor,[13] or to share the excitement of the salvagor who, while diving off Point Lookout, discovered in excellent condition the valuable antique propeller of the "Acara," stranded and sunk there some 66 years before.[14]

Patent

PATENT CASES have also receded in relative importance, but still trickle in at perhaps the rate of one or two a year per judge and continue to be difficult to resolve. Among the devices which were the focus for patent litigation were: an apparatus for curling plastic yarns to be used as hair on a doll's head;[15] a sound masking device;[16] and an invention relating to lamination of polyurethane foam to fabric by the use of flame heat to be used for wall to wall carpeting. The latter case, described by the trial judge (whose opinion invalidated the patents) as "dreary and acrimonious," consumed 61 days of trial with 9000 pages of testimony.[17]

Diversity Cases

THE ORIGINAL RATIONALE for giving the federal courts jurisdiction over suits between citizens of different states — the reasonable possibility of discrimination against out-of- state parties in state court — no longer seems apposite. Whether federal diversity jurisdiction should be ended has been the subject of debate for two decades. In the meantime, diversity jurisdiction still yielded in the Eastern District cases and litigants of interest.

One prominent litigant was "Dr. J," Julius Erving, who sought recission of his contract with the Virginia Squires Basketball Club in a suit brought in the Eastern District.[18] From the point of view of law, one of the most interesting cases involved a suit by a Dutch manufacturer of steel strand against a domestic manufacturer of pre-stressed concrete of which strand is a component; a suit which raised interesting questions of interpretation of the Uniform Commercial Code and related sales and contract law.[19]

We might select an action brought by Kuwait Airways against Ogden Allied Aviation Services to exemplify the diversity cases. As the trial judge introduced it:

> This case arises out of a fender bender between two rather extraordinary fenders: one attached to a truck of the type used to hoist meals onto aircraft, the other on a Boeing 747. Because the parties who owned the vehicles involved in the collision are of diverse citizenship, and the amount in controversy exceeds the statutory minimum, this Court has jurisdiction.[20]

At issue was whether the airline was entitled to an award of damages for the loss of the aircraft, when they had been able to employ a substitute plane. To decide the case, the law of New York State had to be applied, but to do this meant choosing between directly conflicting doctrines of different departments of the Appellate Division, predicting just how the New York Court of Appeals would resolve that conflict. It was held that the airline was entitled to a reasonable measure of damages for loss of use even absent any out-of-pocket expenditures, but that those damages had to be reduced to the extent, if any, that they were recouped by operator efficiencies which were proven to have resulted from the accident.

*Bankruptcy**

OVER THE PAST QUARTER of a century there have been many changes in the administration of bankruptcy cases. Until 1979, U.S. district courts were courts of bankruptcy. The district judges were responsible for the appointment of bankruptcy referees — retitled bankruptcy judges in 1970 (when they began to wear robes) — whose jurisdiction permitted them to fulfill the various duties imposed upon courts of bankruptcy, subject to review at any time by the district court.

In 1978 Congress passed a comprehensive bankruptcy law. The statute created bankruptcy courts as separate entities, adjuncts of the district court, with pervasive jurisdiction to handle all civil proceedings arising in or relating to a bankruptcy. The District Courts were left with essentially an appellate role, though otherwise relieved from involvement in the bankruptcy process.

In 1982 the Supreme Court held the jurisdictional power of the bankruptcy court unconstitutional.[21] Congress responded with the Bankruptcy and Federal Judgeship Act of 1984, which gave to the district courts exclusive and original jurisdiction of all bankruptcy cases. Further changes were made by the Bankruptcy Judges, U.S. Trustees and Family Farmers Bankruptcy Act of 1986.

As a result of these changes, the bankruptcy court is now a unit of the district court, which refers all bankruptcy cases and proceedings to the bankruptcy court. The Courts of Appeal are responsible for the appointment of bankruptcy judges, whose term of office is 14 years. Bankruptcy judges may hear and enter final orders in all "core proceedings," which include, but are not limited to, administrative matters and other areas which had historically been in the domain of the district courts — such as discharges, automatic stays, fraudulent conveyances, preferences, chapter 11 reorganizations, and chapter 13 individual debt adjustments. Bankruptcy judges may hear non-core proceedings but may not enter a final order unless the parties consent. The district court may withdraw a case or proceeding from the bankruptcy judges, but must hear wrongful death or personal injury claims, as well as appeals from the decisions of bankruptcy judges. Oversight of the actual bankruptcy administration is the function of the U.S. Trustees, an agency of the Department of Justice.

*This section is largely based upon material provided by Conrad B. Duberstein, Chief Judge of the Bankruptcy Court in the Eastern District.

Among the many interesting bankruptcy cases of the past quarter of a century were a number involving hospitals. Some hospitals were forced to close permanently — most notably — the Williamsburg, Baptist and the Lutheran Hospitals. On the other hand, the Jewish Hospital of Brooklyn, facing an emergency because of its inability to obtain Medicaid funds from the state, was successful in its efforts to reorganize, when the bankruptcy court called upon Governor Hugh Carey for state assistance. Major bankruptcy proceedings involved the Brooklyn Navy Yard, the Bohac Corporation and the Parr Meadows Race Track.[22] In a Chapter 11 bankruptcy reorganization involving a major oil distributor, the trustee not only traced and recovered millions in a secret bank account in Austria — enough to pay the creditors almost in full — but went to Panama to apprehend the debtor's principal who was ultimately convicted of criminal fraud.

Perhaps the most important bankruptcy case in the Eastern District during this period involved Robert Kras, who sought to file a voluntary petition in bankruptcy. Kras, responsible for his wife, his mother and three young children, one of whom had cystic fibrosis, had been unemployed for about 2½ years except for odd jobs, and lived on a total public assistance allotment of $366. His sole assets consisted of $50 worth of clothing and household goods. Seeking discharge in bankruptcy of debts of $6,428, Kras moved for leave to file his bankruptcy petition without prepayment of the filing fee of $50, stating that he could not afford it. The district court held that the statutory requirement of the payment of filing fees as a condition precedent to obtaining a discharge in bankruptcy was an unconstitutional denial of due process and equal protection as applied to Kras.

The Supreme Court of the United States reversed, holding that since the bankruptcy process was not essential to the exercise of any fundamental constitutional right, Congress was free to allocate access by a system of fees in order to make the bankruptcy system self-sufficient. In dissent, Justice Stewart commented, "The Court today holds that Congress may say that some of the poor are too poor even to go bankrupt."[23]

Bankruptcy filings have increased almost seven fold in the past 25 years. In 1965 there were 1,246 total filings of which 1,138 were straight bankruptcy and 91 were corporate reorganizations. In the 1989 calendar year there were 8,332 filings. 6,616 were Chapter 7 cases, which permit a deserving debtor to obtain or discharge of debt and a fresh start. 384 were corporate reorganizations under Chapter 11. 1,332 cases were filed under Chapter 13, a remedy for the relief of financially troubled debtors,

permitting them to stay losing their homes or being dispossessed from their apartments, while working out a plan to cure defaults, so that they might retain their residence. While 1986 legislation enabled family farmers to seek rehabilitation, there were but three such cases in the Eastern District.

During the past 25 years there have been eleven bankruptcy judges in the Eastern District. At various times bankruptcy judges have maintained offices in Staten Island, Brooklyn, Jamaica, Ridgewood, Mineola and Riverhead, as well as in Brooklyn. Currently, three bankruptcy judges, including the Chief Bankruptcy Judge, sit at 25 Clinton Street, a few blocks from the Cadman Plaza Courthouse, two bankruptcy judges in Westbury, and one in Hauppauge.

Government Regulation of the Market Place

FROM THE BEGINNING of their history, the federal courts were expected to play an important role in enforcing federal laws regulating aspects of the economy. The areas of law just considered — admiralty, patent, bankruptcy, even diversity cases — are examples. Involvement increased with time, especially because of laws passed during the Progressive and New Deal eras. Today, with the federal government involved in all aspects of the economy, the federal courts play a major role in enforcing federal policies, as well as in scrutinizing the activities of government regulators. While the Eastern District does not hear as many antitrust and securities cases of the importance of those filed in the Southern District of New York, it is active in those and other areas of economic regulation. We might select three areas to suggest the District's activities in economic regulation during the past 25 years: trademark and unfair competition, banking, and labor law.

Trademarks and Unfair Competition

TRADEMARK PROTECTION involves an exclusive right to use a particular name, symbol or device to identify a product. In addition, an unregistered trademark may be protected where the packaging or labeling of a product has come to identify the goods and the service of the goods (tradedress). Unfair competition does not involve such an exclusive right, but under the Lanham Act there is a statutory remedy for a party injured by a competitor's false designation. In addition, a remedy exists for false or misleading advertising which misrepresents the qualities of goods.

Trademark, tradedress and unfair competition cases in these years involved such products as the Murphy Bed,[24] Halston Cologne,[25] counterfeit Gucci and Louis Vuitton handbags.[26] Ives Drugs sued to protect its drug "Cyclosprasmol."[27] Tripledge Products sought to protect their multi-edged windshield wipers.[28] Getty petroleum won its suit against various defendants who were selling and delivering to Getty Brand Stations on Jericho Turnpike and elsewhere non-Getty supplied gasoline."[29]

Banking

THE Franklin National Bank had been a major force in the post-war development of Long Island. The nation's twentieth largest banking institution, with five billion dollars in resources, and 3.7 billion in total deposits, its failure in 1974 threatened the economic health not only of the district, but of the nation. The ensuing litigation generated some 100,000 pages of depositions, millions of documents, thousands of pages of briefs and ten million dollars in legal fees.[30]

Many of the judges of the Eastern District handled aspects of the litigation. On October 8, 1974, the Franklin was declared insolvent by the Comptroller of the Currency. The Federal Deposit Insurance Corporation was appointed the bank's receiver. On that day, *ex parte* court approval was given to the proposed sale of the bank's assets by the FDIC to the European-American Bank and Trust Co., which assumed the FNB's liability. The FDIC as receiver sold to itself all the remaining stock.

Both the FDIC, as receiver of FNB, and the Trustee in Bankruptcy of the parent holding company, Franklin New York Corporation, brought suit seeking recovery on various Bankers Blanket Bonds which had assured both companies against any loss through dishonest or fraudulent acts of employees. Various claims were made by the FDIC and the Trustee against various officers and directors of the FNB and the Franklin New York Corporation. Holders of stock and capital notes of Franklin bought between July 16, 1973 and May 16, 1974 brought a class action against former officers, directors and employees as well as against independent accountants. The primary defendants sued for damages under federal securities laws for materially misleading representations as to Franklin's financial stability, then pressed third party claims against the Office of Comptroller of the Currency, FDIC and Federal Reserve Board. The Court then held that the laws authorizing government agencies to examine and regulate banks did not impose a duty running from the United States, nor had a duty arisen under statutes which gave rise to tort liability. Nonetheless, the Court held that there still might be a cause of action against the United States. Claims by third parties against the United States were not dismissed on Federal Tort Claims Act nor on statute of limitations grounds. Summary judgment for the United States was not granted because it was believed that continued presence of the government would insure a more full and fair development of the evidence.

After five years, just as what promised to be a bitterly contested six month trial had gotten under way, this complex multidistrict litigation was settled. Part of the settlement agreement was a commitment that the settlement itself be kept secret.

Labor Disputes

WHEN LABOR DISPUTES are brought to court they often arrive with considerable media attention, obvious bitterness between the parties, and the need for swift action. Work stoppages involving the Long Island Railroad, which carries approximately 250,000 passengers daily, occurred periodically during the quarter of a century. The importance of the railroad to Long Island can be suggested by the fact that it would take 52 lanes of expressway to handle its traffic.

The Court's powers were invoked in 1983 to end a strike by the Brotherhood of Railway Carmen over the reassignment of jobs, shifting work sites, and changing days off.[31] An injunction was issued at 3:00 a.m. on November 30, 1984 to prevent a strike over the transfer of workers from the Jamaica Yards to outlying facilities, and over forcing employees to work outside of their job classifications.[32] In 1986 a temporary restraining order (TRO) was granted to prevent a job action by the United Transportation and Brotherhood of Locomotive Engineers over the pace of contract negotiations.[33] In January 1987 an eleven day strike did occur. Later in the year, a TRO was issued to end a wildcat strike of engineers.[34] In 1988, after a signalman was killed in an accident, the signal maintainers were ordered to return to work after a job action which protested the railroad's refusal to assign employees to work in pairs in situations the unions considered hazardous.[35]

Labor troubles affected the airways as well. Disputes were brought into court involving the labor policies of Texas International Airways,[36] the pressures the Teamsters Union placed on airlines,[37] and the behavior of the Professional Air Traffic Controllers Organization (PATCO), a union of government employees. A strike in 1970 ended after litigation which brought about a settlement in which PATCO was barred by permanent injunction from strikes. When the union sought to evade the agreement eight years later, the judge "gently remind[ed] the defendants that they are in no different position than any other employee of our federal government, including each and every federal judge."[38]

Criminal Law and RICO

IN 25 YEARS there have been profound changes in the criminal side of the Court's docket, not so much in the number of cases, but rather in the type of case prosecuted and the availability of constitutional protections for the criminal defendant. In 1965 the caseload included over 500 criminal cases a year. About 50% of these involved cases of theft from the mails, the forging of government checks stolen from the mail, and the wagering tax. The rest were divided up among alcohol tax violations, income tax violations, prosecutions for false bomb scares at the airports, smuggling and other crimes. Narcotics violations accounted for 8% of the criminal cases. The most celebrated class or cases were bank robberies. In 1989-90, 49.4% of criminal cases were narcotics related. More criminal cases reach trial than before — so many that judges now try only a handful of civil cases to a verdict. These days the most celebrated criminal cases involve political corruption and organized crime.

While there are many causes of the changes in the nature of the Court's work in the criminal law, four in particular have been important in the Eastern District: The professionalization of the U.S. Attorney's office and changed litigating policies of the Department of Justice, the liberalized constitutional standards applying to criminal defendants, the vast increase in drug trafficking, and the RICO statute.

"It is the *United States Attorney*," David G. Trager observed when he took his oath of office in 1974, "who sets the tone of the office, who selects the staff, who determines generally which investigations are to be conducted and, in most instances, subject only to the check of the grand jury, which cases are to be prosecuted."[39]

Over the years there was significant professionalization and depolitization of the U.S. Attorney's office. The days were left behind when the appointments of assistant U.S. attorneys were often made with considerations of patronage above those of professionalism, as well as the times in which there was at least the perception that the hands of party leaders could be seen in the prosecutions not brought. The habit of professionalism was fostered by agreement between New York's Senators to permit U.S. Attorneys of the opposition party to complete their four year terms, and when their time came to select, to make merit rather than politics the criteria. Of the able U.S. Attorneys since then, four later

became judges of the Eastern Disrtict (Edward R. Neaher, Edward R. Korman, Raymond J. Dearie and Reena Raggi).[40]

These changes meshed with changes in the policies of the Department of Justice — to shift resources away from bank robberies and other cases more appropriately prosecuted in state courts, — and to focus instead upon long term investigations, prosecution of white collar crimes, political corruption, organized crime, and drug trafficking.

A second factor shaping criminal cases during this period was the expansive manner in which the Supreme Court interpreted the protections of the Fourth, Fifth, Sixth and Eighth Amendments. Beginning in the 1930s, this trend gathered momentum in the 1950s, and prevailed in the 1960s. While changes in the composition of the membership of the High Court after 1968 led for the most part to a more restrictive view by the justices of these protections, the milestone decisions were not overturned, nor in applying them did lower court judges always offer such restrictive readings.

A third factor shaping the criminal caseload of the Eastern District was in the enormous increase in *drug cases*. Drug cases make up 25% of the criminal docket in the federal courts nationally, 44% of all criminal trials and 50% of all criminal appeals. Because the airports and the port of New York are important places of entry for drugs into the United States, drug prosecutions are omnipresent in the Eastern District. Indeed the Eastern District cases escalated from 222 in 1985 to 372 in 1989 — about a 30% increase in 4 years. Many of these are prosecutions of "mules" — persons used solely to smuggle drugs into the country with no further interest in the transaction. Such prosecutions are frustrating. Sentences do little good in deterring the conduct because replacements can always be found from among the desperately poor in foreign countries.

But drug prosecutions have not been limited to mules. The federal government brings actions to seize and forfeit property which may be the profits of drug transactions, actions against businesses trading in drug paraphernalia, and prosecutions of gangs trading in drugs. One of the major weapons in the war against drug traffickers, as it is against organized crime, is RICO.

RICO

THE RACKETEERS Influenced and Corrupt Organization Act, passed in 1970, was designed to seek the eradication of organized crime in the U.S. by providing new remedies to deal with the unlawful activities of those engaged in organized crime. Modeled after the enforcement provisions of the antitrust laws, RICO provides criminal penalties of imprisonment, fines and forfeiture, but also provides that any person injured in his/her business or property by violations of the act may sue and recover treble damages. RICO was, as we shall shortly see, used, as originally intended, to attack organized crime. However, beginning in 1981, there was an explosion of litigation employing the civil RICO remedy to attempt to gain windfall recovery for ordinary injuries, especially in cases of securities and common law fraud crimes. To recover under the civil section of RICO, the plaintiff must allege (under RICO § 1962 et seq) that the defendant had, through the commission of two or more acts constituting a pattern of racketeering activity (such as murder, robbery, kidnapping, bribery, but also mail fraud, drug related activities, securities fraud, etc.), invested or participated in an enterprise, the activities of which affect interstate or foreign commerce. Plaintiff must further allege that he or she was injured in his or her business or property by reasons of violations of the acts proscribed by Section 1962. If the plaintiff actually wins the case, treble damages may be recovered including lawyers fees. The use of RICO was facilitated by decisions that RICO claims did not need to be grounded in allegations that the defendant was affiliated with organized crime nor that the racketeering enterprise had to have an economic significance apart from the pattern of racketeering activity.[41]

Concern over the misuse of the application of RICO to essentially civil cases led to a landmark Supreme Court decision, spawned in the Eastern District, which upheld the broad use of the statute. *Sedima S.P.R.L. v. Imprex Company, Inc.*, involved litigation between the Belgian supplier of equipment to aerospace and defense industries and a New York exporter of aviation parts. At issue were allegedly fraudulent activities of Imprex, the New York company, in a joint venture. This case *did not* involve organized crime. Sedima's complaint alleged unjust enrichment, conversion, breach of contract, breach of fiduciary duty and constructive trust. It alleged that the mailing of fraudulent purchase orders and credit memos by Imprex constituted predicate acts upon which a RICO claim could be based.

At the trial stage, the complaint was thrown out with the holding that, for RICO to be used, the complaint must allege a "RICO Type" injury, which is either a "racketeering injury" or a "competitive injury." A divided Court of Appeals affirmed, reading RICO narrowly to permit private actions only against defendants who had been convicted on criminal charges and only where a "racketeering injury" had occurred (an activity which RICO had been designed to deter). The Supreme Court reversed by a 5-4 vote, reading RICO broadly, holding that restriction of the use of RICO in civil actions was a matter for Congress, not the courts.[42]

After *Sedima*, judges of the Eastern District continued to wrestle with the application of RICO in situations far removed from organized crime, such as: a battle over the property belonging to a Chassidic congregation[43]; a suit brought by Suffolk County related to the construction of the Shoreham nuclear power plant[44]; and the prosecution of the owner of 50 Gaseteria discount stations, essentially for failure to pay state sales tax.[45]

The largest suit ever filed under RICO, *United States v. Private Sanitation Industry Associates et al.*, was brought in the Eastern District. This suit was consistent with the original purpose of *RICO*: to attack organized crime's invasion of otherwise legitimate sectors of the economy. It was brought to end alleged Cosa Nostra control of the garbage hauling business on Long Island. The first civil RICO case targeting an entire industry, the suit named 110 defendants — 54 carting companies, 54 owners and Long Island town officials, a teamsters local and a private industry association — who allegedly ran the Long Island carting industry and other enterprises through a pattern of racketeering which encompassed theft, extortion, and bribery. The 131 page complaint alleged 660 predicate acts, 47 civil RICO claims, and 43 separate RICO enterprises dating back to the 1970s.[46]

Organized Crime Prosecutions

CERTAINLY, one of the most characteristic features of the docket of the Eastern District during this period were the consistent number of organized crime cases. These cases presented important questions of pre-trial detention, speedy trial, discovery, the use of hearsay testimony, and the scope of the attorney-client privilege. Many cases were brought

with complex indictments of many defendants with joinder of many parties and many crimes. As one judge put it in a case with 17 separate counts and numerous alleged instances of both discrete and criminal activity: "These huge complicated RICO cases require specially tailored proceedings, if the court is to properly control the litigation in a way protective of both the public's and the defendant's interest."[47] The cases were also colorful, featuring able counsel, rogue cops, notorious informers, attempted jury tampering, and defendants, who at sentencing claimed so many diseases and disabilities that they should have been unable to engage in activities of any kind.

At one time or another the bosses of four of New York's five Cosa Nostra families were defendants in proceedings in the district. Carmine Persico, later to be boss of the Colombo family, was tried five times for a truck hijacking dating back to 1959. He finally was convicted and went to prison.[48] Carmine Persico's older brother, Alphonse "Allie Boy" Persico, underboss of the family at one point, mysteriously disappeared on the date of his sentencing for extortion, and "remained disappeared" for seven years, before showing up and receiving 25 years. Among others prosecuted from the Colombo family were James Angellino, who served as acting boss, and Gennaro Longella. Philip "Rusty" Rastelli, boss of the Bonanno family after Carmine Galente was shot in 1979, was convicted after a five month trial with 50 witnesses in a RICO action involving a racketeering enterprise, which had as its object the control and use of a union to extort money from moving and storage companies through bid-rigging, price-fixing and payoffs.

In May, 1990, the head of the Genovese Family, Vincente Gigante, was indicted, along with the boss and underboss of the Lucchese family, and charged under RICO with operating a multi-million dollar criminal window replacement enterprise.

John Gotti, who became boss of the Gambino family (the family *The Godfather* was based upon) after Paul Castellano was murdered, was originally indicted with nine other defendants in a case involving charges that they took part in gambling, loan sharking and hijacking criminal enterprises. With one defendant dead, one who fled, and still another who pled and fled, Gotti and six other defendants were found "not guilty."[49] Late in 1990 Gotti was once again indicted, this time on racketeering and conspiracy charges. Gambino underboss, Joseph "Pincy" Armine, was convicted and sentenced to 15 years on drug dealing charges. The Gambino family "elder statesman", Joey Gallo, was sentenced to ten years in prison for bribery and extortion.[50]

No prominent defendant in the Eastern District other than Carmine Persico absorbed as much court time as Gene Gotti, brother of John Gotti and leader of a Gambino crime crew. Originally indicted on charges that he helped run a multimillion dollar criminal enterprise that smuggled millions of pounds of heroin into the New York area, Gotti's three trials were held before three different judges and consumed seventeen months. One mistrial granted on motion of the Government because of jury tampering brought about the first en banc hearing of the judges of the Eastern District. That hearing resulted in a finding that the Government had acted properly in bringing to the trial judge's attention jury tampering. Gotti's second trial lasted three months and ended in a hung jury. His third trial ended in a conviction.[51]

Political Corruption

FEDERAL PROSECUTIONS for political corruption ordinarily involve charges of violating one or more of the federal laws against bribery, extortion, mail fraud, conspiracy, perjury to a grand jury, and/or RICO. Proof of political corruption is often "buried beneath mountains of financial records and other complex, ambiguous documents" for "motive and intent are routinely sealed behind the lips of hostile witnesses and unfriendly, often sophisticated, co-conspirators."[52]

Beginning in the early 1970s, U.S. Attorneys, connected only nominally to a political party, successfully investigated members of Congress, party leaders, state judges and a variety of city and state office holders — Republicans and Democrats alike. In addition, a majority of the ABSCAM prosecutions were brought in the district.

Ten-term U.S. Representative Mario Biaggi and former Brooklyn Democratic leader Meade Esposito were prosecuted for bribery and conspiracy to obstruct justice, resulting from two Florida vacations Biaggi accepted in exchange for using his influence to help the Coastal Dry Dock and Repair Co., a client of Esposito's insurance firm. Biaggi was cleared of the more serious bribery and conspiracy charges, but convicted after a jury trial of obstruction of justice, illegal interstate travel, and acceptance of an illegal gratuity. Esposito was convicted of charges connected with the gratuity and interstate travel but found not guilty of

conspiracy and bribery.[53] The 80 year-old Esposito was fined $500,000, given two years probation and ordered to perform 500 hours community service. Biaggi was sentenced to 2½ years in jail and fined $500,000.[54]

Another member of Congress, Representative Fred W. Richmond, pled guilty to tax evasion and other charges and agreed to resign from the Congress and not to seek re-election. The latter part of the plea agreement was, however, voided as an unconstitutional interference by the executive branch with the legislative branch, as well as with the rights of Richmond's constituents.[55]

Two state judges were convicted of criminal charges. William Brennan of the State Supreme Court was convicted after a jury trial of taking bribes of more than $47,000 to fix cases ranging from gambling to murder. Stating that "No crime is more corrosive of our institutions than the bribery of a judge," the sentencing judge imposed five years in prison, five years probation and $224,300 in fines and forfeitures.[56] Judge Samuel Weinberg of the New York City Civil Court, who pled guilty to racketeering charges, had harassed elderly low-paying tenants in buildings he owned with fraudulent eviction suits, hired vandals, withheld repairs and evicted tenants by force. He was sentenced to eight years in prison and $175,000 in fines and forfeitures.[57]

The most important prosecution of a local politician was the bitterly fought prosecution for mail fraud and extortion of Joseph Margiotta, Nassau County Republican leader and, at the time, one of the most powerful political leaders in the state. Margiotta was accused of using his influence to have more than $500,000 in municipal insurance commissions kicked back to party favorites, reserving $5,000 for himself. Margiotta insisted that he was not an elected public official, that he did not exercise official control, and that the practice was legitimate patronage. The first trial ended in a hung jury. At the second trial, the jury took 23 hours before coming in with a verdict of guilty on all six counts. Margiotta was sentenced to two years in prison. The conviction was affirmed.[58]

The most publicized political corruption prosecution in the United States during the 1980s began as an undercover "sting" operation, conducted out of the FBI office at Hauppauge, to recover stolen works of art as well as counterfeit stolen stocks and bonds. Given the code name "Abscam," it involved a con man of enormous ability, Melvin Weinberg,[59] who agreed to cooperate with the FBI in return for a sentence of probation. The general pattern of the scam involved Weinberg posing as a representative of wealthy Arab interests who had

money available for "deals." The focus of the scam changed from securities and works of art to gambling casinos in Atlantic City and from there to assistance public officials might offer for a price to Arab sheiks. Meetings between undercover FBI agents and members of Congress and other political officials, who accepted large sums of money, were recorded by concealed videotape cameras. One U.S. Senator, six members of the House of Representatives and three city councilmen were caught in this net. Most of the prosecutions occurred in the Eastern District, where several of the videotaped meetings had taken place. There were four separate trials, involving Representatives Michael O. Myers and Raymond F. Lederer of Pennsylvania, Senator Harrison Williams and Representative Frank Thompson, Jr. of New Jersey, and John M. Murphy of New York. The guilt or innocence of the defendants, "caught so blatantly red-handed" was hardly in doubt, but more difficult questions were raised as to whether the Congressional defendants might be protected by the Constitution's Speech and Debate Clause, whether the investigation had violated due process, whether there had been entrapment, and whether the defendants had been prejudiced by pre-trial publicity. With one small exception, the Court of Appeals affirmed the convictions, stating that the pre-trial proceedings had been "vigorous contests, marked throughout, by the fairness, patience and thoroughness of the District Judges."[60]

"White Collar" Crimes

AMONG THE "white collar" defendants convicted in the district during this period were the Beechnut Nutrition Company, the Southland Corporation, which owned the 7-Eleven Chain, the Hertz Corporation, and Bowe, Walsh & Associates. Beechnut pleaded guilty to violating the Food, Drug and Cosmetic Act by selling millions of bottles of apple juice, intended for babies, containing sugar water and caramel coloring. The two million dollar fine which was imposed was the largest ever imposed under the statute. Beechnut's former president and chief executive officer, Neils Hoyvald, pleaded guilty after his conviction and jail sentence of one year and a day had been reversed by the Court of Appeals on an apparent misapprehension of the facts justifying venue in this District and the jury had deadlocked in his second trial. He was sentenced pursuant to a plea agreement with the Government to five

years probation, one thousand hours of community service and a fine of $100,000.[61]

Hertz pleaded guilty to defrauding some 110,000 customers and insurance companies by having charged inflated or fictitious repair costs. The company agreed to make restitution of $13.7 million dollars and to pay a fine of $6.85 million.[62]

Southland was convicted in 1984 of conspiring to commit tax fraud by a scheme to bribe New York state tax officials connected with sales taxes owed by the 7-Eleven chain. While corporate executives were acquitted on the bribery conspiracy counts, a vice president of the corporation was convicted of one charge of violating the securities laws.[63] In connection with this scheme, Eugene Mastropieri, New York City councilman from Queens, was convicted and sentenced to 18 months in prison.

Another white collar case successfully prosecuted involved the activities of a Long Island based engineering firm, Bowe, Walsh & Associates, and Charles T. Walsh, its senior partner. The case arose out of extortion and bribery with respect to the Suffolk County Sewer District — an enormous and costly project undertaken in the 1970's — as well as other projects in the metropolitan area. As described in the opinion affirming the judgment of conviction: Over a 12-year period ending in 1979, BWA and Walsh "engaged in an audacious pattern of corrupt and illegal activities in New York, New Jersey and Connecticut . . . [Their] actions bring to mind George Jacques Danton's famous phrase — l'audace, encore de l'audace, toujours de l'audace (audacity, more audacity, always audacity) — coined during a speech delivered before the French Legislative Assembly in 1792."[64]

Terrorism and Terrorists

THERE WERE a number of proceedings in the Eastern District involving acts of terrorism in the United States or attempts to purchase weapons in the United States for use by terrorists abroad. Indeed, on December 31, 1982, the U.S. Courthouse in Cadman Plaza was itself the object of a terrorist's bomb.

The British press watched with interest the trial of IRA "gun-runners," who allegedly plotted to buy missiles for use against British helicopters and electronic gear for detonating bombs. After five hours of deliberation, the jury brought in guilty verdicts.[65]

There were also trials of members of the FALN (Fuerzas Armadas de Liberacion Nacional), a Puerto Rican independence group, for refusing to testify before a grand jury investigating more than thirty bombings in New York.[66] There were convictions of members of the United Freedom Front for bombing military installations and U.S. offices doing business in South Africa.[67] The same judge handled the case of members of the Jewish Defense League for their bombings and other activities, including tear gas thrown into the audience at the Metropolitan Opera protesting Soviet treatment of Jews.[68] Finally, Croatian nationalists were convicted of air piracy for their hijacking of a flight from LaGuardia to Chicago (which ultimately ended in Paris). A New York City policeman had been killed while attempting to dismantle a bomb relating to the hijacking. Two of the four defendants who were convicted received life sentences.[69]

The most recent case in the Eastern District involved a request by Israel for the extradition of a Palestinian who was involved in an attack on a civilian bus on a highway in the West Bank. The Court of Appeals ultimately affirmed the holding of two judges of the Eastern District that the defendant was subject to extradition because "an attack on a commercial bus carrying civilian passengers on a regular route is not a political offense."[70]

Miscellaneous Criminal Cases

THE VARIETY of criminal proceedings in the Eastern District during this quarter of a century is quite extraordinary, considering that the range of federal criminal law is much narrower than state criminal law. There was a Long Island couple who pled guilty to selling $250,000 of undersized clams; a former commodities broker sentenced for free-basing cocaine aboard a jet; a defendant accused of killing his mother with a bomb hidden in a hollowed-out notebook; a parachutist who landed in Shea Stadium during the 1987 World Series. We might choose four more cases to suggest the range of *important* criminal cases heard during this period.

A judge of the Eastern District was the first federal judge to respond to an unusual invitation from the Supreme Court. In a 1965 case, *Swain v. Alabama*, the U.S. Supreme Court had held essentially that it was not unconstitutional for attorneys to challenge prospective jurors because of their race. Only where there was complete exclusion of black jurors in the

locality could a *prima facie* case of racial discrimination be made out. In 1982 the New York Court of Appeals upheld the conviction of Michael McCray for robbery. At his trial, the prosecutor employed seven peremptory challenges against blacks which had the result that McCray, who was black, faced an all white jury. Although the Supreme Court denied certiorari, two justices dissented, and three other justices concluded that the issue was important, but that "further considerations of the substantive and procedural ramifications of the problem by other courts" would enable it "to deal with the issue more closely at a later date."

McCray then petitioned for *habeas corpus* in the Eastern District, arguing that his right to a jury trial had been violated by the state proceeding. Noting that "(i)t is unusual to say the least, for a district court to reexamine a Supreme Court case squarely on point," but as it appeared that the high court had invited such consideration, the district judge concluded that the *Swain* rule ought to be modified and the Equal Protection Clause construed to prohibit a prosecutor's exercise of preemptory challenges to exclude blacks solely on the basis of race. The Supreme Court followed suit three years later.[71]

While the Supreme Court has narrowed the availability of collateral review of state court proceedings,[72] in the Eastern District there have been a number of recent examples of its effective use. One of the most notable involved a heinous crime — the murder of a thirteen year old boy in Smithtown by four teenagers, allegedly after he saw them in possession of a stolen bicycle. The method of accomplishing the murder was exceptionally vile — by stuffing stones the size of marbles down the boy's throat.

The police so badly bungled the investigation that ultimately all four convictions were overturned — two by state judges, two by a single judge of the Eastern District. One of the latter involved Michael Quartararo, against whom the prosecution's case was particularly weak. There was no evidence directly linking him to the murder. What testimony there was was vague, inconsistent and presented problems of credibility. Yet, state convictions may not be easily upset. This one was because of the performance of Quartararo's attorney, who failed to give an opening statement, failed to object to the most obvious prejudicial testimony against his client, failed to object to an inflammatory summation, and then delivered a "rambling, disjointed summation" of his own. Habeas corpus was thus granted because Quartararo had been deprived of effective assistance of counsel, for, in "such a close and troubling

case," there was a reasonable probability that if counsel had been effective, "the outcome would have been different."[73]

There were two notable criminal cases of first impression in which Eastern District judges upheld the constitutionality of important federal laws. In another prosecution involving "gun-runners" for the Irish Republican Army, the government indicated that it intended to introduce at trial wiretapped conversations, intercepted pursuant to the procedures of the Foreign Intelligence Surveillance Act. That post-Watergate statute attempted for the first time to establish standards for obtaining a court order authorizing electronic surveillance in cases involving foreign powers or agents of foreign powers, where national security was at stake. The Act established a court made up of sitting district judges, selected by the Chief Justice, to whom federal officers must submit an application, having obtained the approval of the attorney general. The District Judge upheld the law, stating that Congress had "struck a reasonable balance between the government's need for foreign intelligence and the rights of its citizen's."[74]

Six years later, a law dealing with a very different activity was upheld, the Federal Mail Order Drug Paraphernalia Act, which made criminal the sale, distribution or importation of drug paraphernalia through the mail or through interstate or foreign commerce. Its first major test involved the indictment of Stephen Pesce, president of Main Street Distributors of Hauppauge, charged with selling 500 vials with small spoons attached. The firm also sold hashish pipes, cocaine free-basing kits, cocaine snorting kits, crack pipes, roach clips, polyethylene bags and pocket scales. Upholding a search warrant under the act, the judge held that it was from "the totality of the circumstances, considered in light of common sense, that the probability of an intent to traffic in drug paraphernalia, and not some innocent item, can be gleaned."[75]

Civil Rights

QUITE POSSIBLY the most important change in the work of the federal courts throughout the nation during the period was their use to vindicate civil rights — some constitutional, some statutory, some recognized in name but not in fact at its beginning, some unknown, some perhaps even unimagined in 1965. Under the rejuvenated § 1983 of the Civil Rights Act of 1871, as well as under a number of landmark anti-discrimination laws passed by Congress beginning in 1964, individuals and classes would come to seek not just the protection but the affirmative decrees of the federal courts. At least some of the most important of these cases represented a new form of litigation. If the traditional model of rights litigation had been of one party suing another for the vindication of rights, much of the new public law litigation was marked by far wider participation (often a class suing a government agency) with other parties intervening. The focus of the law suit, rather than damages, was upon forward-looking relief. Affirmative injunctions were sought — not preventing conduct but requiring it. Courts were asked to grant (and often ordered) relief which resembled legislation more than court judgments; relief often resulting from extensive negotiation; relief which depended upon continuing court monitoring; decrees in which responsibility for implementation was often far more often with the trial judge than with the executive branch. If, as some have argued, the role of the court in this new form of litigation was at the root what it had been in the past — to insure fair play by the rules, and that government agencies remained within their lawful bounds, as well as to prevent majoritarian abuses — in appearance, at least, this was something new.

It is possible only to hint here at the range and significance of civil rights cases which occurred in the district through the selection of several of the most important cases in the areas of employment discrimination, housing policy, segregated schools and the conditions of state institutions.

Job Discrimination

THE NEW YORK CITY Firefighters case, *Berkman v. City of New York*,[16] exemplifies the virtues and limitations of class action litigation to break down gender-based employment discrimination. Prior to legislation passed by Congress in 1972, women had not been allowed to join the New York City Fire Department. When the New York City firefighter's test was opened to women, 410 women took the first test. 95% of the female candidates, including Brenda Berkman, passed the written exam, but every female candidate failed the physical examination. In 1979 Berkman challenged the validity of the examination, arguing that the physical portion discriminated against women. Eight years of litigation resulted in refined physical tests and the hiring of a few women, although the rank order entry examination was ultimately upheld.

Berkman filed suit under amended Title VII of the 1964 Civil Rights Act. After a bench trial the physical portion of the examination was ruled not job-related. As one illustration the judge pointed to the "dummy carry" in the examination — carrying a 120 pound dummy on one shoulder up and down a flight of stairs — which, if employed in real life, would have been dangerous in the extreme to carrier and carried alike. The judge ordered the development of a new test. The new (interim) qualifying test agreed upon by the class and the City was then unsuccessfully challenged by the Uniform Firefighters Association. After one special qualifying exam was administered, 39 women were hired.

The City developed a new physical examination. Fewer females than expected who passed the written test took the physical test, but 47% of those that did passed it. The City's hiring needs at that time, however, were such that only two women had a chance of actually being hired. The trial judge then enjoined the use of the eligibility test, until hearings were included on the validity of the new test. He then found that the physical portion of the exam had a disparate impact upon women and that its results presented a *prima facie* case of sex discrimination. He held that the City's system paid an "undue emphasis" upon manual speed and strength, while ignoring earlier court findings on the importance of stamina or paced performance in firefighting. Changes were ordered in the scoring of the examination to remedy the misplaced emphasis.

On appeal, the Court of Appeals affirmed findings on the validity of the examination, reversing the District Court as to scoring of the exam. More important, the Court upheld the validity of a physical examination that placed exceptional importance on strength without measuring

pacing ability and stamina. The Court of Appeals ordered the promulgation of the new examination's eligibility list, but directed that the list be supplemented with test scores of those women who passed the written test and accepted a training program and would take the physical test again.[77]

One further aspect of the eight year firefighter's litigation should be mentioned, collateral from a technical point of view, but relevant, because it broadens understanding of the obstacles to be overcome to achieve equality — whether court-ordered or not. Back in 1983, Berkman and Zaida Gonzalez, who had passed the qualifying interim test and been appointed firefighters, were terminated by the Department at the conclusion of their probationary period. They sought and received reinstatement on the grounds that their termination resulted from retaliation against them by other firefighters and their superiors. The trial judge's opinion told much. The Fire Department, he wrote, "failed lamentably to prepare its officers and members for the extraordinary task of integrating women into its presently all male ranks." Instead of treating the women as colleagues, instead of allowing them to partake of "the unique forms of cooperative effort, joint social activity, and communal life developed in the city's firehouses in response to the unusual demands of the job," there were intentional retaliatory discrimination, crude sexual comments, physical sexual molestation, and a denial of the traditional communal effort to cook and eat together.[78]

Among the other interesting employment discrimination cases in the Eastern District during this period was the first case requiring an interpretation of the Equal Pay Act of 1963;[79] an unsuccessful challenge to the exclusion of women from certain positions in the army;[80] and suits resulting in the modification of the tests screening applicants for the Nassau County police force.[81]

Equality in Housing

TWO OF THE most important cases dealing with housing equality involved Starrett City and the Town of Huntington. The Starrett City case[82] raised the issue of whether under federal law racial quotas could be used by private landlords to maintain *racial integration.* Starrett City, a privately owned middle income housing project, was the largest housing development in the United States occupying 153 acres in Southeast Brooklyn and containing over 17,000 tenants.

When the Starrett City litigation began in 1979, "racial balance" — a ration of 64% white, 22% black, 8% Hispanic — was maintained by a racially controlled tenant selection program allocating 70% of available vacancies to whites. Litigation was brought by seven black plaintiffs. A class, comprised of all blacks who had submitted apartment applications at Starrett City and had been informed that they were financially eligible, was certified. In 1985, the parties agreed to a settlement, which provided that the number of apartments for blacks and hispanics would increase by 175 over 5 years.

At this point, with the consent decree before the judge, the Attorney General of the United States brought suit to force the Court to decide whether the policy of Starrett City's methods of maintaining racial balance violated the 1968 Fair Housing Act. The Court held that it did, that private landlords were not empowered to establish quotas, but had to obey the Fair Housing Act. A divided Court of Appeals affirmed, though the dissenting judge called the majority decision a "tragedy" that would hurt a model integrated housing project. The Supreme Court denied certiorari.

The Huntington case was more explosive. Its ultimate decision was a considerable contribution to the interpretation of the Fair Housing Act in the context of an exclusionary zoning challenge.[83]

In 1980 the Town of Huntington in Suffolk County had a population of approximately 200,000 of whom 95% were white. Its minority population was highly concentrated within two neighborhoods, one of which included a small urban renewal zone. The municipality's zoning regulations on their face limited private construction of multifamily housing to the designated urban renewal area — already 52% minority. In 1979, Housing Help, a non-profit housing association corporation, secured an option on a tract of land that was deemed well suited for a planned 162-unit, low income, integrated housing project, but it was in an area zoned for single-family houses. The Town Board voted against rezoning. A class action was then brought on behalf of black, Hispanic and low income persons. In the second phase of the law suit, it was argued that the Town had violated the Fair Housing Act by restricting construction of multi-family housing to a largely minority urban renewal area, and by refusing to take action to provide multiparty zoning for subsidized housing in a white neighborhood.

The district judge refused to invalidate the zoning restrictions, holding that since Huntington permitted multifamily dwellings within its boundaries, it had met its fair share of responsibilities to provide a balanced

community and to demonstrate a sufficient consideration of regional needs and requirements.

The Court of Appeals reversed, holding that a violation of the Fair Housing Act could be established without proof of discriminatory intent. It held that the disproportionate harm to blacks and the segregative impact on the entire community resulting from the refusal to rezone created a strong *prima facie* showing of discriminatory effect. The municipality's refusal to amend its ordinance significantly perpetuated segregation in the town. The Court granted site-specific relief because of the protracted nature of the litigation and the Town's lack of good faith commitment to low income housing.

The Government petitioned the Supreme Court to overturn the Second Court decision. The Supreme Court noted jurisdiction, but limited its review to a small portion of the case, expressly declining to review the judgment of the Court of Appeals insofar as it related to the refusal to rezone the project site. After a firm district court ruling enforcing the Second Circuit decision, the Huntington Town board approved rezoning for low-cost multi- family housing.[84]

Segregated Schools

THERE WAS considerable litigation during this period involving segregated schools. In little more than a decade (1969-80) one trial judge handled the following actions involving the New York City Schools: a case involving large number of black students disciplined and effective denied schooling; challenges to special education programs for the socially maladjusted on the grounds they were segregated; suits against the federal government by the City Board of Education for funds cut off because of alleged segregative school practices; suits by teachers and others against city and federal authorities for agreeing to assign teachers by race; suits over the method of voting for local decentralized school boards which had been designed to give minorities more power.[85] The same judge heard the Mark Twain school case,[86] a class action involving a segregated junior high school in Coney Island. In that case a special master was appointed to speak to legal and extralegal groups to obtain their views and cooperation before developing a plan to transform that underutilized, segregated school into an integrated, magnet school for students throughout the district.

Institutional Litigation: Willowbrook

NO INSTITUTIONAL LITIGATION in the New York area may be better known than that over the Willowbrook State Development Center on Staten Island. In 1972, after over a decade of public exposure, Willowbrook housed 5,200 persons, mostly children, many severely retarded. Its official capacity was 2,950. Beds were jammed next to one another in the wards and along hallways. Filth and stench were ubiquitous. Children were often beaten by staff; bruised and bitten by other children. The understaffing in all categories — physicians, nurses, physical therapists — was shocking. Children whose IQ averaged 19, not only did not receive schooling or training in this state institution, but lacked for toys and other diversions. When he visited the institution, the initial trial judge saw toilets and fountains which did not work, as well as fifty-three men lying nude without an attendant.

Litigation was brought in 1972. Unlike other institutional litigation involving prisons, jails and mental hospitals, where the residents were formally confined by the state, parents were free to withdraw their children from Willowbrook at any time. The trial judge, however, recognized the "inhuman and shocking conditions" which had prevailed at Willowbrook and granted preliminary relief, circumventing the voluntariness problem by holding that those who live in state correctional institutions are owed certain custodial duties. Though not recognizing a "right to treatment" and expressing concern about the radical restructuring of New York State's treatment of the mentally retarded by a federal judge, the Court nevertheless recognized a constitutional right to reasonable protection from harm, a right which encompassed a tolerable living environment, protection from assault by fellow inmates or staff, medical care, the opportunity to exercise, adequate heat, and the necessary elements of basic hygiene. The Court ordered immediate hiring of additional physicians, physical therapists, ward attendants and recreation staff, ordering that within a reasonable time a contract be entered into with an accredited hospital for the care of acutely ill Willowbrook residents.[87]

Prior to the trial, which was held in December 1974, the Department of Justice joined the Willowbrook suit as *amicus curiae* and the judge accepted the Department's offer of FBI monitoring of compliance with his order.

A consent judgment, the product of months of negotiation between the parties, was approved in May 1975. Under that judgment, the state

promised to reduce the population of the hospital from 5,400 to 250 and to place those released in the community in the least restrictive alternative possible. The consent decree provided for a seven person review panel with professional staff to serve as monitors of performance, arbiters of disputes, providers of professional assistance, and to report periodically to the Court. There were, in addition, 29 single spaced pages of stipulations requiring the improving and the emptying of Willowbrook.

The trial judge died in June 1976 and the implementation of the consent decree became the responsibility of another judge. During the process of devising group homes in the community, placing Willowbrook residents in them, and of improving Willowbrook, disputes between the state and the review panel often ended up in court with the Court usually backing the panel. David and Sheila Rothman, the scholars who most closely followed the implementation process, wrote that the trial judge created a climate in which the most progressive and determined administrators of both the higher and lower echelons came forward with the Court helping them gain and exercise power. "Whatever commitment," they wrote, the judge had to protecting the Willowbrook class, his most notable attribute was his commitment to "playing by the rules."[11] We must take leave of the Willowbrook story at this point even though judicial responsibility for oversight of the process of placing Willowbrook residents into the community continues to this very day.

Constitutional Cases

THE MOST memorable constitutional litigation during the last twenty-five years in the Eastern District involved the constitutionality of the Viet Nam War and attempts to end by injunction the bombing of Cambodia. There was, in addition, a major case involving abortion which generated a monumental opinion, several reapportionment cases of considerable local interest, and a range of interesting First Amendment cases.

Vietnam and Cambodia

AS PUBLIC DISCONTENT over the war in Vietnam grew, opponents resorted to the courts as one tactic to win public support, maintaining the distant hope that the courts might actually intervene. While there were grave constitutional questions as to the extent of the President's power to wage a major war absent a congressional declaration, federal judges refused to reach them for years, dismissing suits at the threshold for lack of standing to sue or by holding that the extent of the President's war powers was a "political question," which the courts ought not decide. Almost simultaneous decisions of two judges of the Eastern District broke dramatically from the prevailing pattern.

The cases involved Malcolm Berk, a young resident of Queens with orders to report to Vietnam, and Salvatore Orlando of Rockville Centre, who had reenlisted in the army and volunteered for duty in Vietnam. Orlando's wife pleaded with him to withdraw that request. He did so, but nevertheless was ordered to Vietnam. Both men, represented by able counsel, argued that they had a constitutional right not to be sent to Vietnam. In Berk's case the motion for a preliminary injunction was denied and the complaint dismissed. But Justice Byron White stayed Berk's departure for Vietnam and the Court of Appeals held that, although the injunction was properly denied, the complaint presented a justiciable question, even though it might still be dismissed as not fit for judicial resolution because of a lack of manageable standards.

In Orlando's case, the District Court stated that "the power to declare and wage war was pointedly denied to the Presidency" and that there was no exception "for a self-denied emergency power in the presidency." Nonetheless, specific appropriations statutes left "no certainty about Congressional will and purpose."[89]

In Berk's case, the trial judge reached the merits of the constitutional question, then held that Congress had authorized the President to send troops to Vietnam. Congress, the judge stated, had known what it was doing and intended to have American troops fight in Vietnam.[90] *Orlando* and *Berk* sent notice to Congress for the very first time that a vote in favor of the national defense budget could be construed as consent to a war.[91]

Hostilities in Vietnam did not end with the withdrawal of American combat troops on March 28, 1973. The Government continued intensive combat operations in Indochina, including extensive bombing of Cambodia, during negotiations for a ceasefire. Congress then imposed a cutoff date of August 15, 1973 for funds to be used to finance U.S. hostilities in Indochina. Representative Elizabeth Holtzman of Brooklyn and three air force officers brought suit for a determination, by way of a declaratory judgment, that the President of the United States and military personnel under his direction could not engage in intensive combat operations in Cambodia without Congressional authorization. Reaching the merits of the constitutional issue on July 25, 1973, three weeks before the cutoff, the Court held that the issue was not a political question, that appropriations bills do not necessarily indicate an open-ended approval of all military operations, that majorities in both Houses were opposed to any continuation of bombings in Cambodia, and that Congress had not given its authority for the bombing of Cambodia. The Government was then *permanently enjoined* from participation in any way in military activities in or over Cambodia. This was the strongest judicial challenge to the prerogatives of the executive during the Vietnam war period. The Court of Appeals overturned the decision and stayed the injunction. The Supreme Court refused to vacate the stay of the injunction.[92]

Abortion

AFTER THE 1973 landmark decision in *Roe v. Wade,*[93] courts throughout the country wrestled with difficult and politically sensitive issues as to whether a variety of laws regulating abortion were unconstitutional. Of these, one of the most important, raising the constitutionality of the congressional cutoff of Medicaid assistance for abortions, arose in the Eastern District, *Harris v. McRae.*[94]

It was in September 1976 when Congress, for the first time, barred the use of federal funds to reimburse the cost of abortions under the Medicaid program. The funding restriction, commonly known as the "Hyde Amendment," made impossible financial assistance to the "categorically needy" for abortion except under certain very limited circumstances. On September 30, 1976, the day on which Congress enacted the initial version of the Hyde Amendment, suit was brought in the Eastern District. The named party was Cora McRae, a New York City resident in the first trimester of her pregnancy, who, without means, needed to rely upon Medicaid for all medical care. The other plaintiffs were a physician, Irwin B. Teran, Planned Parenthood, and the New York City Health and Hospitals Corporation (which operated sixteen municipal hospitals). The case was certified as a class action. The defendant was F. David Mathews, Secretary of the Department of Health, Education and Welfare. Senators James L. Buckley and Jesse A. Helms and Representative Henry J. Hyde were permitted to intervene as defendants. At issue was a profound clash between Congress' broad power of the purse and the right recognized in *Roe v. Wade* — the right to be able to choose whether or not to bear a child.

Three days later the Court issued an injunction banning the denial of Medicaid reimbursements for elective abortions. The judge held that when Congress chose to fund the Medicaid program, it had "laid down the parameters of medical assistance for the nation."[95] Those with the means to pay for medical services "are free by virtue of our positive law to exercise their constitutional right to terminate their pregnancies", but "the needy, the wards of government, would by this enactment be denied the means to exercise their constitutional right." He added that "[w]hen the power of enactment is used to compel submission to a rule of private conduct not expressive of norms of conduct shared by the society as a whole without substantial division, it fails as law and inures as oppression."[96]

The Supreme Court vacated the injunction and remanded the case for reconsideration in light of a decision it had just rendered, *Maher v. Doe*, in which it upheld a Connecticut welfare regulation under which Medicaid recipients received payments for Medicaid services incident to child birth, but not payments for Medicaid services incident to non-therapeutic abortion.

The trial on remand, conducted between August 1977 and September 1978, produced a transcript exceeding 5,000 pages. The judge's remarkable opinion covered 346 pages of typescript. He held in essence that the Hyde Amendment was valid under that clause of the Constitution which prohibits establishment of religion, but that it violated the Equal Protection component of the Fifth Amendment and the free exercise of religion clause of the First Amendment. The judge concluded: "the unreconcilable conflict of deeply and widely held views on this issue of individual conscience excludes any legislative intervention except that which protects each individual's freedom of conscientious decision and conscientious nonparticipation."[97]

The Supreme Court reversed 5-4, holding that a woman's freedom of choice does not carry with it a constitutional entitlement to the financial resources to avail herself of the full range of protected choices. According to the Court, "the Hyde Amendment leaves an indigent woman with at the least the same range of choice in deciding whether to obtain a medically necessary abortion as she would have had if Congress had chosen to subsidize no health users at all."[98]

Three years later, in another case attracting national attention, the Eastern District rebuffed the Government's effort to force parents of a badly deformed infant to consent to an operation which it was thought would prolong the baby's life in a vegetative state.

"Baby Jane Doe" was born October 11, 1983 with spinabifida, an open spinal column, water on the brain and other deformities. Physicians believed that the infant would be almost totally disabled and severely retarded as long as she lived. Her agonized parents refused to agree to corrective surgery to treat the spinal defect and drain water from the infant's skull; surgery which could have been expected to prolong her life from two to twenty years. They opted instead to rely upon good nutrition, antibiotics, and dressing the exposed spinal sac, a choice accepted by the New York Court of Appeals.

The federal government then sued the hospital, the State University Hospital in Stony Brook, to review the medical records, arguing that it wished to make sure that the baby was not being discriminated against because of her handicap. The trial judge refused to grant the administration's request.[99] The Court held that the reason the hospital was not performing the surgical procedures was not because of Baby Jane Doe's handicap, but because her parents had refused to consent to such treatment, and their decision was a reasonable one based upon genuine concern for the best interests of the child, after due consideration of the

medical options available. However, the Court also took the position that the right of privacy could *not* be asserted by a parent or guardian for the purpose of precluding an inquiry into the question as to whether the parent or guardian was in fact acting in the individual's best interest, and that the federal government may be authorized to challenge unreasonable choices of medical treatment for handicapped children. A divided Court of Appeals affirmed. The baby was taken home two months later, after one operation had actually been performed.

Reapportionment

AFTER THE Supreme Court decisions in *Baker v. Carr* and *Reynolds v. Sims*[100] in the 1960's, reapportionment suits sprang up all over. Two of the most important in the Eastern District involved redistricted lines in Kings County and the constitutionality of the New York City Board of Estimate.

The district lines in New York State for Congressional and state legislative seats, which had been drawn in 1972, had been held invalid by the Attorney General of the United States acting under the Voting Rights Act, on the grounds that those lines would produce a racially discriminatory effect. The state did not contest that decision. New lines, drawn by the legislature in 1974, were held valid by the Attorney General. However, in creating substantial non-white districts, the legislature had split the 30,000 Chassidic Jews in the Williamsburg section of Brooklyn into two state senatorial and assembly districts. Members of the Williamsburg community sought by law suit to undo the reapportionment. The trial judge dismissed the action, holding that there had been no violations of the Fourteenth and Fifteenth Amendments, that no one had been disenfranchised by the redistricting, no voting right had been extinguished, and that racial considerations could be employed to correct past discrimination. A divided Court of Appeals affirmed. The Supreme Court also upheld the apportionment, although only with a plurality opinion, reasoning that compliance with the Voting Rights Act in reapportionment cases often will necessitate the use of racial considerations in drawing district lines, but that that will not necessarily violate the Constitution.[101]

Litigation originating in the Eastern District ultimately led to the end of New York City's Board of Estimate. Under the 1901 City Charter the

Board consisted of the Mayor, Comptroller and City Council President — each elected in a citywide election and wielding two votes on the Board — and the president of each borough — each of whom was elected in a borough-wide election and given one vote. Brooklyn, with a 1980 population of 2.2 million, thus had a vote equal to Staten Island with a population of 350,000. There was, therefore, an enormous deviation from the principle of one person, one vote, and the City was unable to overcome the burden upon it to justify that deviation. After the Supreme Court upheld the lower court decision that the Board of Estimate had to be constituted in a different manner,[102] a charter revision commission was created. Its proposals were approved at the polls and went into effect on January 1, 1990 and were the most fundamental change in the government of New York City since 1898. The Board was eliminated. Its powers were distributed among the Mayor, an expanded City Council, and a reconstituted City Planning Commission.[103]

First Amendment

THERE WERE a number of interesting First Amendment cases involving freedom of expression during this period. One important postal statute was upheld and part of another invalidated. The Goldwater Amendment to the Postal Reorganization Act of 1970, which required mailers of sexuality oriented advertisements to purchase a monthly list of persons who didn't want such advertisements and to remove those names from their mailing lists, was upheld as the postal service itself had been given no power of censorship.[104] On the other hand, the much cheaper mailing rates allowed only to the two major political parties and not to other political parties by the Postal Service Appropriation Act of 1980 was held a serious impairment of the ability to communicate.[105]

The First Amendment rights of students and faculty advisors connected with student newspapers were upheld in several decisions.[106] Local ordinances banning off-site commercial advertising on signs were held for the most part unconstitutional in one important First Amendment ruling,[107] as was the American Legion's denial of permission to a Right-to-Life-Committee to march in the Town of Hempstead's Memorial Day Parade.[108] In Eastern District cases which reached the Supreme Court, topless dancing was held by the district judge to be a form of expression protected by the First Amendment,[109] while the

removal of books from school libraries by school authorities had, according to a plurality of the Supreme Court, to be exercised in a manner consistent with the First Amendment.[110]

There was also intriguing church-state litigation involving the prison diets of Orthodox Jews, compulsory vaccination laws, public school graduation on Saturday, and the constitutionality of military chaplains. The late Rabbi Meir Kahane, who pled guilty in 1971 to a charge of conspiring to violate the federal Firearms Act, was held constitutionally entitled to an order accompanying his sentence which mandated that the prison must permit him to conform to Jewish dietary laws.[111] New York State was told that by permitting a religious based exclusion from the requirement of mandatory vaccinations for all school children, it had to recognize the sincere religious principles of those who did not belong to formal religious groups.[112] Seven years of litigation brought by a local Rabbi to end the practice of graduation on Saturdays ended with a Court of Appeals decision upholding the practice.[113] The practice of paid military chaplains was upheld on the grounds that rather than establishing a religion, the government was maintaining the free exercise needs of army personnel.[114]

One of the most remarkable cases involved litigation by Chassidic Jews, who employed the secular courts for what may have been the first time to seek the return of what they argued was their patrimony. At issue was whether the 40,000 books and manuscripts rescued from Poland after the Second World War had belonged personally to their Rabbi or to the community. When the trial judge ruled that the library was held in trust for the benefit of the religious community, his ruling[115] was greeted by Chassidic men dancing to the music of a Klezmer band.[116]

Environmental Cases

ENVIRONMENTAL LAW, as we know it today, is largely the product of the heightened sensitivities to environmental matters of the 1960s as reflected in the activities of citizens groups, judicial decisions — first among them the decisions of the Court of Appeals for the Second Circuit in the *Storm King Mountain* case[117] — and legislation. Environmental litigation continues to flourish and to raise for the courts difficult problems of cost benefit analysis and risk assessment.[118] That environmental matters would stir passions on Long Island was inevitable given its fragile ecological balance, rapid growth, and large number of upper middle class owners of residences and vacation homes.

Among the objects of environmental litigation in the Eastern District were a Fire Island deer hunt[119]; the dumping by the Army Corps of Engineers of material dredged from Westchester and Connecticut harbors into the Western end of Long Island Sound[120] and of Nassau County's sewage sludge into the ocean[121]; application of toxic waste legislation to a dump at Glenwood Landing[122]; the constitutionality of a Suffolk County cesspool regulation that barred the sale of certain cleaning products[123]; damages to property owners over the swift loss of beach front and protective dunes in East Hampton[124]; opposition to nuclear weapons located on naval vessels to be based at a planned port on Staten Island; and the loss of habitat for wildlife and nesting for migratory birds within the Jamaica Wildlife Refuge.[125]

The most important environmental issue before the Eastern District — and it was brought before it frequently — was the future of the four billion dollar Shoreham Nuclear Reactor, essentially completed by 1985. The struggle over Shoreham took place over more than a decade. Reliance upon imported oil for electric generators to produce power for Long Island made the construction of a plant run by nuclear reactors seem a panacea in the early 1970s. Then, elected officials, the New York Public Service Commission, and the Nuclear Regulatory Commission encouraged the Long Island Lighting Company (LILCO) to borrow billions of dollars to construct Shoreham. Technical problems increased the cost of the plant and delayed completion. The accident at Three Mile Island in 1979 added to the "growing revulsion to nuclear power on Long Island," where evacuation in case of an accident can only occur in a single direction.[126]

Vigorous opposition to Shoreham in the early 1980s came from citizens groups and Suffolk County officials. The County refused to participate in off-site evacuation planning, because, they argued, no such plan could protect the health, welfare and safety of county residents. It was, ultimately, a civil RICO action brought by Suffolk County for itself alone and for one million past and present ratepayers (the County's claims were severed from those of the class[127]) which produced agreements which appear to have closed Shoreham permanently as a nuclear power plant, tied LILCO's distribution system into New York State's power grid to take advantage of cheaper and cleaner electric power; and created a settlement fund of 390 million dollars for rate reduction and refunds.[128]

Entitlements

IN THE 1970 case, *Goldberg v. Kelly*,[129] the Supreme Court held that the government cannot grant essential benefits without some system providing procedural due process for those receiving the benefits. Justice Brennan's opinion broke from the view that government benefits were privileges, recognizing that at least some were so essential to their recipients that they were interests in liberty.

Tracking *Goldberg v. Kelly* closely four years later, an Eastern District Judge ruled in *Frost v. Weinberger*[130] that whenever there is a downward adjustment of Social Security benefits, there must be a pre-reduction evidentiary hearing.

In 1985 an Eastern District judge held, for the first time anywhere, in a suit brought by two needy homeless families that, where the State had voluntarily committed itself under the Social Security Act to providing emergency shelter for homeless families, that the State was bound to actually do so. In the 1987 settlement of that case, Nassau County agreed to provide emergency housing 24 hours a day, seven days a week. The settlement also established standards for the emergency housing, requiring that there be sheets, locks for the rooms, and the provision of meals.[131]

In a notable series of cases, not only in the Eastern District, but throughout the nation, the federal courts closely scrutinized Executive Branch efforts in the early 1980's to cut costs in the Social Security disability program. Even before that, Congress had passed legislation requiring the Social Security Administration to conduct periodic review of its disability awards to make certain they were still justified. Under the statutory scheme a worker is considered disabled if he is unable, considering his age, education, and work experience, to engage in substantial gainful work. The Government took that charge seriously, so seriously that Administrative Law Judges were under considerable pressure to affirm the termination of benefits. Between March 1981 and November 1983 the agency conducted over one million such reviews and terminated disability awards in 45% of the cases it investigated. In 50% of the cases that were appealed to the courts throughout the nation, the agency's decisions were overruled. The Social Security Administration followed a policy of "non-acquiescence" with respect to these judicial rulings,

refusing to incorporate the standards the courts had decreed into its own decision-making procedures. Thus, each person, many very poor, whose benefits were terminated, had to go to the courts to get them restored.[132] During the 1982-83 fiscal year, 905 cases challenging denial of Social Security benefits were filed, representing over seventeen percent of the civil caseload.[133]

Although a disproportionate number of disability claimants come from the disadvantaged layers of society, in the Eastern District almost all were represented by an attorney. Many were referred to the Eastern District Pro Bono panel — 300 volunteer lawyers and 20 law firms who agreed to represent those filing *pro se.* The Eastern District Civil Litigation Fund not only provided funds for expenses of counsel and sponsored seminars for lawyers on the pro bono panel, but money from the fund was used to hire private physicians to evaluate Social Security claimants.[134] Realizing the effect of delay upon the claimants, the judges themselves handled the cases rather than referring them to magistrates, read records and briefs before argument, and generally decided cases with an oral opinion rendered immediately after argument.[135]

In a large number of cases, the government was reversed. In *Edwards v. Secretary of Dept. of Health and Human Resources*[136], for example, the Agency terminated benefits on the ground that the claimant was no longer disabled, even though she had a total hysterectomy, removal of the urinary bladder, abdominal pain, and medication had produced various side effects. The Administrative Law judge recognized a "severe medical impairment," but "one that the claimant can still function with." Reversing, the Court held that the Secretary was refusing to acquiesce in a presumption of continued disability, the hearing "seemed designed to avoid rather than to elicit the truth," the expert opinion of the treating physician was not even mentioned in the Administrative law judge's decision, and there was no substantial evidence to support the decision.

In *Quinones v. Secretary of Dept. of Health*[137], the administrative law judge's finding that because Hodgkin's disease was controlled by chemotherapy the side effects of chemotherapy did not disable the plaintiff from work, even though the treating physician's prognosis was guarded. The Court rejected as well the ALJ's application of the "sit and squirm" index, that if the claimant seemed not to be suffering back pain during his eighteen minute hearing and could drive for ninety minutes to attend it, this meant that his subjective back pain could be disregarded, in spite of uncontroverted medical evidence.[138]

Finally, where the city and state of New York sued the Social Security Administration on behalf of mentally ill persons who had been dropped from the disability rolls due to a secret policy ultimately found illegal,[139] the law suit and decision helped expose the problems of the disability review program, generated public concern and Congressional attention to reform.

Complex Tort Litigation

COMPLEX TORT LITIGATION — litigation spawned by major disasters such as plane crashes, toxic waste spills and drugs which prove to have horrible effects — is a comparatively recent phenomenon. Such cases may have hundreds, if not thousands or tens of thousands of plaintiffs, multiple defendants, and may raise difficult problems as to causation and proof of injury. During this quarter of a century, the Eastern District has been host to major litigation over air crashes, the effects of Agent Orange on Vietnam veterans, and, currently, over the effects of asbestos.

By federal law, when civil actions involving common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated proceedings. The agent for the transfer is the judicial panel on multi-district litigation designated by the Chief Justice of the United States. This procedure is not limited to torts. The complex securities litigation which grew out of the failure of the Franklin National Bank, already discussed, is one example.

The air crash at Kennedy Airport of an Eastern Airlines flight from New Orleans on June 24, 1957, in which 113 passengers died, led to law suits in the federal courts of New York, Louisiana and Mississippi. On Eastern Airlines' motion, the cases were all transferred to the Eastern District of New York for coordinated pretrial proceedings. Ultimately, a trial on the issue of Eastern's liability was held in the Eastern District, but the actions were then returned to where they were originally filed for trials as to damages.[140]

The multi-district proceedings growing out of the crash of a Polish Air Lines plane at Warsaw in which all persons aboard died, including a U.S. boxing team, were handled in the Eastern District. The judge ruled that the Polish Air Line was a "foreign state" covered under the Foreign Sovereign Immunities Act of 1976 and, therefore, that the civil action could not be tried to a jury. He also held that the point type on the ticket to limit liability was so small that the air line was *not* able to limit the amount of liability to $75,000.[141] Litigation over Pan American Flight 103, which crashed over Lockerbie, Scotland, on December 21, 1988, the apparent result of terrorism, was also transferred to the Eastern District.

The most celebrated complex tort case in the district involved the herbicide Agent Orange, which had been used by the United States in Vietnam. Litigation began with the filing of a 162 page complaint in the Eastern District. Six hundred cases, initially filed in state and federal districts courts all over the United States, were transferred to the Eastern District. The litigation was handled by two members of the Court, the second judge taking over after his predecessor had been appointed to the Court of Appeals. While a number of corporations were originally named defendants, by the time of the settlement, only seven companies remained.

The case was certified as a class action in 1980. The class was constituted of all servicemen from the United States, Australia and New Zealand injured by exposure to Agent Orange or other phenoxy herbicides used as defoliants in Vietnam from 1961 to 1972. The class certification was modified in 1984. At that time, the Agent Orange plaintiffs were the only certified class in a products liability case in the United States.

While the Court of Appeals reversed the trial judge's decision that the action could go forward because the defendants had violated federal common law, the litigation went forward, after the class was certified, as a diversity of citizenship case. Ultimately, the trial judge refused to apply the law of any single state, looking instead to "federal or national consensus substantive law."

Under considerable pressure from the judge, the class agreed to settle on May 7, 1984, just as trial was about to begin.

The settlement fund, amounting initially to almost 200 million dollars (investment by the Court subsequently increased the fund to 240 million dollars) was divided into three programs: 150 million dollars for an insurance policy for death and disability during the period 1970-1995 covering each of the estimated 600,000 U.S. Vietnam veterans exposed to Agent Orange; 45 million dollars to fund projects aiding children with birth defects and their families or to alleviate reproductive problems; five million dollars for Australian and New Zealander veterans.

The U.S. Court of Appeals for the Second Circuit heard two days of argument on sixty-seven appeals and cross appeals resulting from the settlement agreement. On April 21, 1987 it affirmed the trial judge in nine opinions dealing with different aspects of the case. The Agent Orange litigation became widely known for the innovative ways in which the two judges handled the litigation.[142]

Judicial Administration

OVER THE PAST twenty-five years, there has been increasing sensitivity on the part of judges to judicial administration. It is not inaccurate to state "for every large or small mismanagement, the judicial process pays a price."[143] Effective administration is particularly important in the district courts, not only because of the volume of business, but because trial courts come into contact with members of the public more than do the appellate courts.

In the 1950s and 1960s the backlog of cases in the Eastern District was so considerable that several times teams of judges from other districts came in to assist in attacking that backlog. However, the past twenty-five years have seen remarkable changes in the administration of the Court. Beginning with the tenure of Joseph C. Zavatt as Chief Judge (1962-69) and continuing through that of Jacob Mishler (1969-80), Jack B. Weinstein (1980-88) and Thomas C. Platt (1988-), the Eastern District modernized and the productivity of its judges greatly increased. Beyond this, the Court came to the forefront of federal courts in such areas as the close relationship between its bench and bar in improving the work of the court, in its methods of handling cases (especially the mega-cases), with its clerk's office, in the efforts it made to assist indigent parties before the court, and in its sensitivity to the needs of the general public.

Judges and Caseload

THE CASELOAD of the Court has tripled in twenty-five years, while the number of judgeships increased only from eight to twelve. (Just at the time of this writing, three additional judgeships were created by Congress.) At present, there are eleven active regular judges, one vacancy, and two senior judges.

Simple mathematics suggest the far greater burdens upon those serving today. (See appendix for statistical charts.) In 1965, 1,242 civil and 554 criminal cases were commenced. In 1989, it was 4,341 and 805. In 1965, 155 civil and 69 criminal cases were commenced per judgeship. In 1989, 362 civil and 67 criminal cases were commenced per judgeship position.

Even counting the three new judgeships — and the judges have not yet been appointed — the number of filings per judge would be 289 and 54, still a remarkable increase. The 1965 court with eight judges terminated 1,507 civil and 431 criminal cases. In 1989 the court of eleven active and two senior judges terminated 4,435 civil and 721 criminal cases.

Area Courthouses

THE INCREASE in caseload overall, and that of Nassau and Suffolk Counties in particular, as well as the increase in the number of judges, not only generated space pressures on the Cadman Plaza courthouse, but suggested the value of area courthouses to the Court and to the bar. In April 1971, the Westbury courthouse opened. There were chambers for three judges in the state motor vehicle building. The Westbury courthouse was moved to Uniondale in October 1981 (officially opening in 1982). At present, the Chief Judge of the Court, one regular, active judge, one senior judge and two Court of Appeals judges have chambers in Uniondale. The Hauppauge division opened on April 1, 1987. Presently one district judge and one magistrate have chambers in Hauppauge.

Under the current rules of the court, a civil case shall be designated a "Uniondale case," if the case arose wholly or in substantial part in Nassau County, or if all or most of the parties reside in Nassau County. The rule for Hauppauge and Suffolk County is similar. A criminal case is designated a "Long Island case," if the crime was allegedly committed wholly or in substantial part in Nassau or Suffolk County. Such a designation may be cancelled on motion of the parties, on the grounds of convenience to the parties and witnesses, or otherwise in the interests of justice. There are separate Brooklyn, Uniondale and Hauppauge civil assignment wheels and separate Brooklyn and Long Island criminal assignment wheels.

*Major Changes in the Administration of the Court**

AT LEAST brief mention should be made of a number of major changes in judicial administration in the Eastern District. The speed and efficiency of the Court was greatly increased by adoption of the individual assignment calendar, which became effective on October 6, 1969. Under the individual assignment system all aspects of a case are assigned to a particular judge promptly after the case is filed. The individual calendar system discourages judge-shopping, focuses responsibility upon a single judge, and enables that judge to become familiar with the problems of the case before trial.

On October 16, 1983, the Eastern and Southern Districts of New York, after many years of issuing separate local rules, agreed once again to issue joint rules. Many of the local rules in each district had been substantially the same, even identical in language, but were numbered and categorized differently. Indeed, there were fewer than a dozen substantive differences between the rules of the two districts. These were resolved and the numbering made identical. Both districts continue to amend rules where necessary after consultation and, where possible, adopt the exact same amendments, although a handful of variances have crept back in.

The Eastern District of New York was one of the first federal district courts to establish a volunteer panel of *pro bono* attorneys and firms. Rules governing procedures for the appointment of attorneys in *pro se* civil actions were effective May 17, 1982. In addition, a not-for-profit corporation, the Eastern District Civil Litigation Fund, Inc., separate from the Court and the clerk's office, was established to provide a means to fund necessary out-of-pocket litigation expenses approved for payment by the assigned judge. The litigation fund received a number of grants, most notably a $25,000 grant from the Ford Foundation to hold seminars in the areas of social security litigation, prisoners' rights, fair employment and other civil rights litigation.

The Board of Judges, following the recommendations of a Special Committee on Effective Discovery in Civil Cases, chaired by Edwin J. Wesley, adopted "Standing Orders" governing discovery matters in civil

*This section was based upon information provided by Robert C. Heinemann, clerk of the court, and by judges of the court.

cases effective March 1, 1987. After a review of their effectiveness, the Standing Orders were amended and were permanently adopted just prior to publication of this study.

The Eastern District was one of the first ten district courts to establish an arbitration program. A local arbitration rule was adopted on January 1, 1986. The Arbitration rule became effective on May 18, 1989.

*Clerk's Office**

THERE WERE a number of major changes in the office of the clerk of the court. Automated systems grew steadily to a point where every substantial operation of the office was affected: financial, jury, naturalization, docketing and statistics. Automated operations have been decentralized from the Administrative Office of the United States Courts so that mainframe computers are housed, maintained, and back-up tapes made and stored by the local clerk's office.

A number of positions were added or placed in the clerk's office, reflecting new demands upon the courts, as well as developments in public administration. In 1976 two mid-management positions were created — an operations manager and a director of administrative services. The operations manager supervises all direct support of judicial officers by courtroom deputy clerks, magistrate clericals, arbitration clerks (established in 1986), statistical and docket clerks. Administrative services includes supervision of the jury selection, naturalization section, financial operations of the court, intake clerks, procurement and property management services and file clerks. In addition, a personnel officer position was created in 1979 as well as a deputy-in-charge position covering the Uniondale and Hauppauge offices.

Since the mid-1970's, staff court interpreters certified by the Administrative Office of the United States Courts in Spanish/English language interpretation and translation, are also part of the staff of the clerk's office. There staff interpreters, including a supervisory staff interpreter, are also responsible for scheduling *per diem* interpreters for all other language needs.

The financial operations for the clerk's office run a wide range from accepting payments for routine filing and copying fees to investigating

*This section is based upon information provided by Robert C. Heinemann, clerk of court.

large sums of money in funds associated with complex litigation. This responsibility encompassed responsibility for the Agent Orange Litigation Fund from 1984 to 1988, which totaled 240 million dollars at its peak.

From 1978 to 1987 the clerk's office for the Eastern District was also responsible for processing of federal park police tickets issued throughout the First, Second and Third Circuits. Further national consolidation in 1986 led to this responsibility being absorbed by the Western District of Texas, except for the scheduling and staffing of local appearances by violations before Eastern District magistrates only.

*Bankruptcy Judges**

AT ONE TIME bankruptcy judges had maintained offices and courtrooms in Staten Island, Brooklyn, Jamaica, Ridgewood, Mineola and Riverhead. All except Brooklyn were discontinued. When the new courthouse opened on Cadman Plaza, accommodations for chambers and courtrooms were ultimately made available for three judges. In 1985 they moved to their present address at 75 Clinton Street. Courtrooms and chambers established in Mineola were moved to Ellison Avenue in Westbury and then to its present location at 1635 Privado Road, also in Westbury, where previously three and now two bankruptcy judges hold court. A bankruptcy court is also maintained in Hauppauge at 601 Veterans Memorial Highway with facilities for one bankruptcy judge.

The office of the clerk of the bankruptcy courts, originally in the courthouse at Cadman Plaza East, is now located in the courthouse at 75 Clinton Street in Brooklyn. It also maintains facilities in each of the other bankruptcy courts in Westbury and Hauppauge. All petitions in bankruptcy are filed in the offices of the clerk of the court at either one of those locations and all files and docket records are maintained in these offices.

*This section is based upon material provided by Conrad B. Duberstein, Chief Bankruptcy Judge of the Eastern District.

*U.S. Magistrate Judges**

THE OFFICE OF United States Magistrate** was created by the Federal Magistrate's Act of October 17, 1968. This law replaced the old system of United States Commissioners (whose duties were limited to trying petty offenses and handling preliminary proceedings in criminal cases such as bail hearings and warrant applications. Under the new system, U.S. Magistrates, as they were initially called, were authorized to serve as adjuncts to District Judges in connection with certain civil matters, such as hearing and reporting on case dispositive motions and supervising discovery.

The duties and responsibilities of the Magistrates were increased by amendments to the Federal Magistrate's Act in 1972 and 1979. At this time, the magistrates in the Eastern District of New York try civil cases and misdemeanor criminal trials on consent, serve as special masters, and by virtue of the Standing Orders of the Court on Effective Discovery in Civil Cases have assumed a growing role in the scheduling and pretrial case management of civil cases. Civil cases may be referred to magistrates for entering a scheduling order; for consideration as to whether to hold a discovery conference; to hear and determine disputes arising from discovery; to consider the possibility, if any, of settlement, and to assist with settlement; to schedule an appropriate trial date. By law, magistrates, if specifically designated, may, if the parties consent, conduct all proceedings in a civil case.

In the Eastern District, the members of the Court employ magistrates in different ways. No type of civil case has been immune from reference, whether contract, medical malpractice, or civil rights. During this period, on the civil side, magistrates in the Eastern District acted as special masters, determined counsel fees, and responded to referrals for a report and recommendation regarding motions for preliminary injunctions. On the criminal side, magistrates handled hearings on suppression of evidence, dealt with motions for contempt, and conducted extradition proceedings.

*This section is based upon information provided by A. Simon Chrein, Chief United States Magistrate Judge, of the Eastern District.

**Retitled United States Magistrate Judge effective November 1, 1990.

Probation Office

THE U.S. PROBATION OFFICE for the Eastern District commemorated its sixtieth anniversary in 1990. The office is responsible for supervision of individuals placed on probation, supervised release, deferred prosecution or who are paroled or statutorily released from federal correctional institutions or from military disciplinary barracks. While ordinarily the judges are finished with the offender after sentencing, the Probation Office continues to be involved for many years. One function of the office is to prepare investigative reports relating to bail, sentencing and the prerelease of prisoners. 5,343 of these were made in 1989. Presentencing investigations alone increased three and one-half fold between 1965 and 1989. In 1989 the office was responsible for the supervision of 2,502 individuals, also three and one-half times the number in 1965.

During the 1960s legislation permitted probation officers more latitude in making recommendations for sentencing and for planning with defendants and individuals under supervision. Among the possible alternatives were furloughs, work release, federal half-way houses, and long-term treatment of certain addictive offenses.

Undoubtedly, the most important development affecting the Probation Office between 1969 and 1990 was the Sentencing Reform Act of 1987, which took effect November 1, 1987. With that law Congress changed the goal of sentencing from an indeterminate to a determinate model which places a high emphasis upon accountability. Prior to the effective date of that law, the presentence investigation of the Probation Office had been used as a diagnostic process for evaluation of criminal defendants. As a result of the 1987 law, the discretion of the sentencing judge was generally restricted to sentencing within certain guidelines. The Sentencing Guidelines now require the application of a complex system of sub-categories. Decisions need be made in determining the defendant's role in the offense, in assigning points for the criminal record, and in recognizing additional distinctions relevant to the application of provisions of the Guidelines. Thus, the role of the probation officer significantly changed as the result of the new determinate sentencing model from part social worker to preliminary fact-finder whose goal is to maintain the integrity of sentencing and insure proper social control.

During this quarter-of-a-century, the Probation Office moved from the Federal Building in Cadman Plaza East to 175 Remsen Street

(Brooklyn Heights) in the mid-seventies to 75 Clinton Street (Brooklyn Heights) in 1987. The number of probation officers rose from 10 (1966) to 89 (1990). The clerical staff grew from 5 (1967) to 54 (1990). Between 1973 and 1985, eleven specialized units were created within the office including the Drug Treatment Unit (1973), Community Resources and Employment Placement (1977), Intensive Supervision (1978), and Home Detention (1985).[144]

The Future

MUCH REMAINS to be done. The Eastern District has a population of eight million, but it has far fewer judgeships than other districts of its size. Three new judgeships were created by Congress for the Court in 1990, but at the time of this writing, none had been filled. By way of comparison, the Southern District of New York has a population of six million and twenty-seven active judges; the Eastern District of Pennsylvania, five million and nineteen active judges; the Northern District of Illinois, eight million and twenty-one active judges. Historically, there has been less sensitivity to the needs of the Eastern District than those of the other large districts. The pressures currently on the eleven active (one vacancy) and two senior judges is enormous — in the overall caseload; in the number of drug prosecutions; in the space pressures in the Cadman Plaza courthouse; in the number of complex and mega-cases; and in the pressure brought on the Court by the Speedy Trial Act. Congress continues to create new causes of action for the federal courts. Litigants increasingly litigate in federal court; U.S. Attorneys' offices are being increased in size, which means that more criminal prosecutions are brought and processed in the Court.[145]

All of the latter is particularly true in the Eastern District where the U.S. Attorney's Office has doubled in size in the last twelve to eighteen months. This means that the Court will not only need in its very near future more judges but new and large facilities in both Brooklyn and on Long Island to cope with its rapidly burgeoning caseload.

The Special Character of the Eastern District

IS IT POSSIBLE to impute a special character or distinctive profile to a federal district court, given the homogenization in the United States in this century, as well as the role of appellate courts in seeing that the law is properly and uniformly applied?

Perhaps it is, at least in some measure. A court reflects to a degree the geographical features of its jurisdiction; the ethnic mix; the lawlessness or lawfulness of its inhabitants and their sensitivity to their environment; the calibre of its governments; the nature of its businesses, transportation system and utilities; the availability and calibre of counsel. It reflects as well the traditions and methods of doing business of its judges, passed down and modified from generation to generation.

The Eastern District of New York is a diverse district — bustling and cosmopolitan to the west (save perhaps Staten Island), more countrified in the east. It is not completely rural, suburban, or urban, but a mix of all three. In comparison with its neighbor across the East River, the Southern District, it is more of a "hometown" court, more informal, less impersonal. It has fewer securities and antitrust cases, fewer of those cases that represent New York as the heart of the nation's economy. But it seems to attract more litigation involving the running of the city of New York than its neighbor, more cases involving crucial environmental issues, and a larger number of organized crime cases.

The Eastern District of New York has a history of collegiality that persists, in spite of the growth in the number of judges and the creation of area courthouses. In the first quarter of its second century, its impact upon its district and beyond was far greater than ever before.

APPENDICES

TABLE 1.
JUDGES OF THE U.S DISTRICT COURT
for the Eastern District of New York, 1965-1990

NAME	APPOINTMENT DATE	RETIRED/ RESIGNED	DECEASED	OTHER
Matthew T. Abruzzo	02/25/36	02/15/66 Sr. Status	05/28/71	
Leo F. Rayfiel	09/17/47	03/04/66 Sr. Status	11/18/78	
Walter Bruchhausen (Chief Judge from 1958-1967)	05/20/53	05/20/67 Sr. Status	10/11/76	
Joseph C. Zavatt (Chief Judge from 1967-1969)	08/26/57	12/31/70 Sr. Status	08/31/85	
John R. Bartels	08/13/59	01/08/74 Sr. Status		
Jacob Mishler (Chief Judge from 6/1/69 to 4/30/80)	09/26/60	05/01/80 Sr. Status		
John F. Dooling, Jr.	11/02/61	11/30/76 Sr. Status	01/12/81	
George Rosling	11/15/61 (Recess Appt.) 11/27/61 (Perm. Appt.)		04/16/73	
Jack B. Weinstein (Chief Judge from 5/01/80 to 3/30/88	05/01/67			
Anthony J. Travia	07/22/68	11/30/74 Resigned		
Orrin G. Judd	07/25/68		07/07/76	
Mark A. Costantino	06/11/71	12/01/87 Sr. Status		
Edward R. Neaher	08/04/71	05/28/82 Sr. Status		
Thomas C. Platt (Chief Judge from 3/31/88 to present)	05/17/74			

Table 1 *(continued)*

NAME	APPOINTMENT DATE	RETIRED/ RESIGNED	DECEASED	OTHER
Henry Bramwell	01/30/75	10/01/87 Retired		
George C. Pratt	05/24/76			06/29/82 (Appointed to Second Circuit Court of Appeals)
Charles P. Sifton	10/26/77			
Eugene H. Nickerson	10/26/77			
Joseph M. McLaughlin	10/13/81			
I. Leo Glasser	02/01/82			
Frank X. Altimari	12/22/82			12/23/85 (Appointed to Second Circuit Court of Appeals)
Leonard D. Wexler	06/23/83			
Edward R. Korman	12/16/85			
Raymond J. Dearie	03/21/86			
Reena Raggi	05/26/87			
Arthur D. Spatt	12/15/89			

TABLE 2.
UNITED STATES BANKRUPTCY JUDGES,
U.S. District Court, Eastern District of New York, 1965-1990

NAME	TERMS SERVED
William J. Rudin	1960-1966, 1966-1972, 1972-1978 (Deceased)
Joseph V. Costa	1964-1970, 1970-1976, 1976-1980 (Deceased)
Manuel J. Price	1965-1971, 1971-1977, 1977-1984 (Retired)
Boris Radoyevich	1967-1973, 1973-1979, 1979-1985 (Deceased)
C. Albert Parente	1972-1978, 1978-1984, 1984-1988 (Retired)
Robert John Hall	1976-1982, 1982-1985, 1985-
Cecelia H. Goetz	1978-1984, 1984-1985, 1985-
Conrad B. Duberstein	1981-1985, 1985-
Jerome Feller	1985-
Marvin A. Holland	1985-
Dorothy Eisenberg	1989-

TABLE 3.
UNITED STATES MAGISTRATE JUDGES,
U.S. District Court, Eastern District of New York, 1965-1990

NAME	APPOINTMENT DATE	REAPPOINTMENT DATE	RETIRED/ RESIGNED
Max Schiffman	1/1/71		1976 Retired
Vincent A. Catoggio	1/1/71		6/13/77 Retired
Edgar G. Brisach (Part-time Position)	4/19/71		4/30/75 Appointment Expired
A. Simon Chrein	5/10/76	5/14/84	
John L. Caden	6/16/77	6/20/85	
David F. Jordan	3/30/78	5/1/86	
Shira Scheindlin	4/19/82		9/8/86 Resigned
Carol B. Amon	5/19/86		
Allyne Ross	9/22/86		
Frederic Atwood (Part-time Position)	4/1/71	5/19/75 4/21/79 4/21/83 4/21/87	

TABLE 4.
CHIEF U.S. PROBATION OFFICERS
U.S. District Court, Eastern District of New York, 1965-1990

NAME	SERVICE	RETIRED/ RESIGNED
Peter E. Saxon	5/1/57-12/30/66	Retired
James F. Horan	2/1/67-12/31/85	Retired
Ralph K. Kistner	1/1/86-	

TABLE 5.
CIVIL AND CRIMINAL CASES COMMENCED
in the Eastern District of New York
Years Ended June 30, 1965 through June 30, 1989

YEAR	JUDGESHIPS	CIVIL CASES COMMENCED	CRIMINAL CASES COMMENCED
1965	8	1,242	554
1966	8	1,258	497
1967	8	1,243	450
1968	8	1,254	483
1969	8	1,430	463
1970	9	1,738	647
1971	9	1,605	1,295
1972	9	1,799	1,422
1973	9	1,850	1,131
1974	9	1,959	894
1975	9	1,981	892
1976	9	2,438	886
1977	9	2,512	759
1978	9	2,643	670
1979	10	3,147	743
1980	10	3,500	615
1981	10	3,931	783
1982	10	4,040	629
1983	10	5,276	563
1984	10	5,717	663
1985	12	4,746	683
1986	12	4,539	822
1987	12	4,533	776
1988	12	4,372	755
1989	12	4,341	805

TABLE 6.
BANKRUPTCY CASES,
Eastern District of New York, 1965-1989

YEAR	PENDING (begin FY)	COMMENCED	TERMINATED	PENDING (end of FY)
1965	1289	1246	1093	1442
1966	1442	1277	1141	1578
1967	1578	1451	1252	1777
1968	1778	1427	1178	2027
1969	2027	1134	1441	1720
1970	1720	929	1124	1525
1971	1525	1306	1160	1671
1972	1671	1401	1166	1906
1973	1906	1297	1157	2046
1974	2046	1471	1290	2227
1975	2227	2541	1220	3548
1976	3548	3669	1967	5250
1977	5250	3453	3286	5417
1978	5417	3274	3800	4891
1979	4926	3513	3498	4941
1980	4941	1168	2662	3447
1981	3447	8692	5690	6449
1982	6449	7117	7349	6217
1983	6217	5634	6253	5598
1984	6474	4698	4835	6337
1985	6337	4714	4686	6365
1986	6365	5334	5089	6610
1987	6610	5779	5783	6606
1988	6606	6000	5816	6790
1989	6787	7249	5518	8518

TABLE 7.
STATISTICAL PROFILE, U.S. DISTRICT COURT,
Eastern District of New York, by Type of Case 1985-1989
12 month period ending June 30th

	1985	1986	1987	1988	1989	DIFFERENC 1989/88
TOTAL CIVIL CASES	4,746	4,539	4,533	4,372	4,341	-31
U.S. CASES, TOTAL	1,835	1,674	1,527	1,425	1,299	-126
Recovery	114	133	165	105	178	73
Medicare-Act	—	2	9	—	2	2
Student Loans	106	3	83	66	78	12
VA	2	127	65	23	88	65
Other Recovery	6	1	8	16	10	-6
Other Contract	486	302	268	157	118	-39
Land Condemnation	—	—	1	1	2	1
Other Real Property	27	47	160	88	30	-58
Tort Actions	105	106	106	122	114	-8
Antitrust	1	—	—	1	—	-1
Civil Rights	36	34	48	45	44	-1
Prisoner Petitions, Total	62	74	71	74	124	50
Habeas Corpus	3	15	11	6	11	5
Civil Rights	—	3	3	1	3	2
Other	59	56	57	67	110	43
Forfeiture & Penalty	150	123	147	159	164	5
Labor Laws	38	38	43	30	35	5
Social Security	587	540	317	450	303	-147
Tax Suits	95	117	81	63	65	2
All Other U.S. Cases	134	160	120	130	122	-8

TABLE 7 *(continued)*

PRIVATE CASES, TOTAL	2,911	2,865	3,006	2,947	3,042	95
Contract	631	721	633	689	768	79
Real Property	25	21	28	20	18	-2
Tort Actions Total	785	678	906	751	800	49
FELA	88	91	66	101	84	-17
Air Personal Injury	32	43	44	45	129	84
Marine Personal Injury	62	46	38	76	47	-29
Auto Personal Injury	181	153	170	149	165	16
Other Personal Injury	245	212	219	197	201	4
Asbestos Product Liab.	2	2	4	54	37	-17
Other PI Product Liab.	110	81	306	64	84	20
Personal Property	64	50	59	65	53	-12
Antitrust	20	14	13	16	11	-5
Civil Rights, Total	324	377	314	327	282	-45
Voting	7	4	5	2	2	—
Employment	92	126	120	106	102	-4
Housing/Accom.	9	10	8	12	4	-8
Welfare	2	1	2	1	—	-1
Other	214	236	179	206	174	-32
Commerce	12	10	15	37	27	-10
Prisoner Petitions, Total	330	347	298	307	358	51
Habeas Corpus	153	163	191	226	217	-9
Death Penalty	—	—	—	—	—	—
Civil Rights	173	182	105	79	137	58
Mandamus & Other	4	2	2	2	4	2
RICO	—	10	8	—	1	1
Labor Laws	279	295	390	366	368	2
Copy, Pat. & Trade	229	218	168	205	180	-25
All Other Private Cases	276	174	233	229	229	—

TABLE 7. *(continued)*
CASES, EASTERN DISTRICT OF NEW YORK
Twelve Month Period Ended June 30

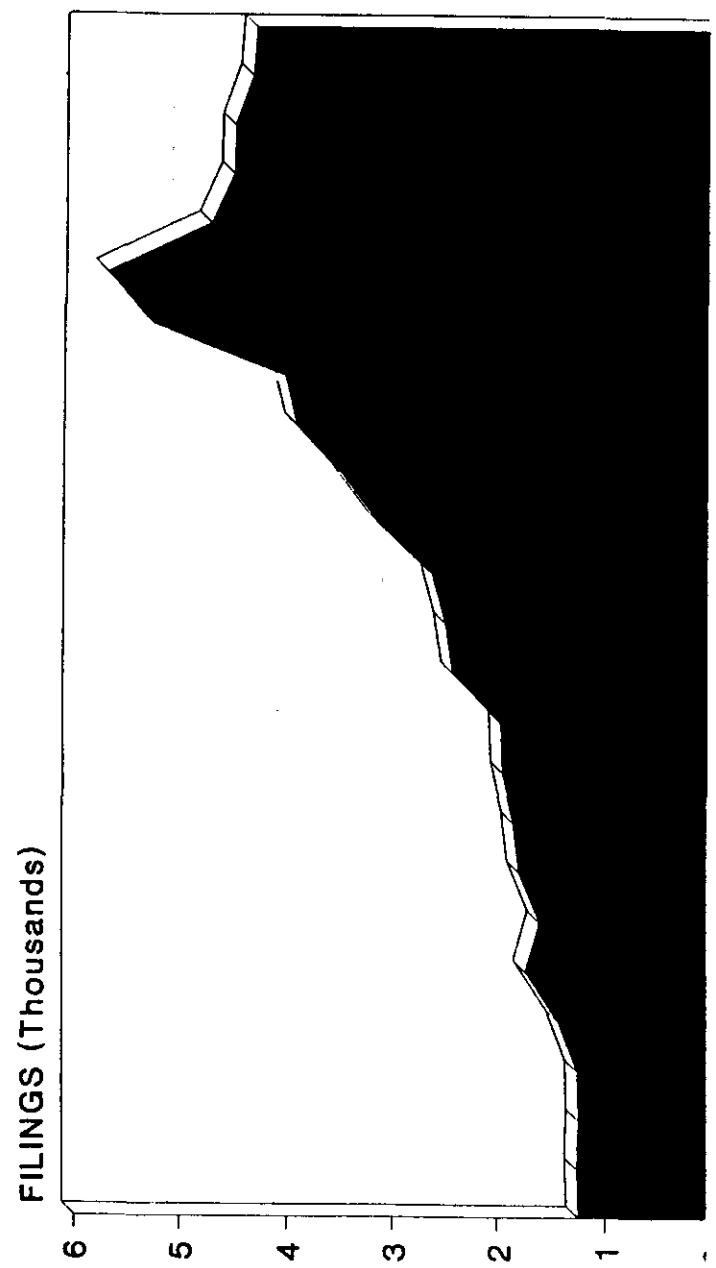
	1985	1986	1987	1988	1989
TOTAL	683	822	776	755	805
Appeals	1	—	—	1	1
Misdemeanor Offenses	124	146	103	65	61
Petty Offenses	1	2	2	1	—
Transfers	27	16	11	20	20
NET FILINGS	530	658	660	668	723
Homicide	—	2	—	—	3
Robbery	10	8	10	15	12
Assault	5	2	5	5	4
Burglary	1	1	1	5	4
Larceny	46	50	51	35	27
Embezzlement	9	14	21	23	15
Fraud	126	157	110	144	127
Auto Theft	5	1	3	3	4
Forgery & Counterfeiting	24	21	28	37	22
Marijuana	6	3	5	14	1
Narcotics	222	289	302	289	372
Controlled Substances	2	5	7	4	5
Weapons & Firearms	18	30	24	16	18
Traffic	—	—	—	—	—
Other General Offenses	36	27	24	31	43
Immigration	5	5	9	7	5
Liquor, Internal Revenue	—	—	—	—	—
Postal Laws	—	2	1	3	1
Other Special Offenses	15	40	59	37	60

TABLE 7. *(continued)*
DEFENDANTS, EASTERN DISTRICT OF NEW YORK
Twelve Month Period Ended June 30

	1985	1986	1987	1988	1989
TOTAL	1,099	1,215	1,215	1,353	1,395
Appeals	1	—	—	1	1
Misdemeanor Offenses	138	159	116	90	65
Petty Offenses	1	2	2	1	—
Transfers	31	17	13	24	26
NET FILINGS	928	1,037	1,084	1,217	1,303
Homicide	—	4	—	1	5
Robbery	12	14	11	16	14
Assault	6	2	7	6	7
Burglary	1	1	2	5	4
Larceny	62	66	63	48	33
Embezzlement	9	14	29	25	23
Fraud	173	197	158	225	191
Auto Theft	7	4	5	5	8
Forgery & Counterfeiting	41	31	40	59	31
Marijuana	12	5	6	16	3
Narcotics	403	510	578	587	765
Controlled Substances	13	25	10	34	11
Weapons & Firearms	25	41	30	33	21
Traffic	—	—	—	—	—
Other General Offenses	129	61	29	75	78
Immigration	5	7	9	23	5
Liquor, Internal Revenue	—	—	—	—	—
Postal Laws	—	2	1	3	1
Other Special Offenses	30	53	106	53	103

CHART 1

CIVIL CASES COMMENCED
EASTERN DISTRICT OF NEW YORK 1965-1989



CRIMINAL CASES COMMENCED
EASTERN DISTRICT OF NEW YORK 1965-1989

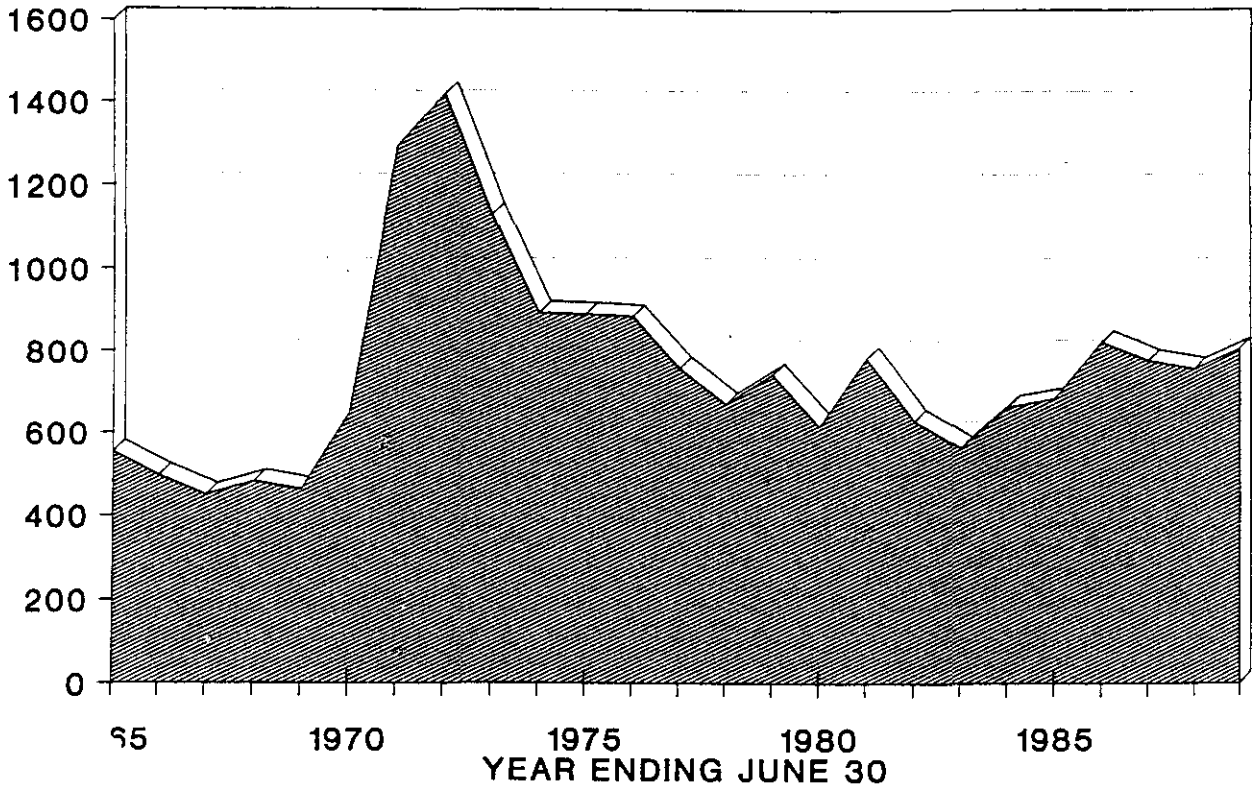
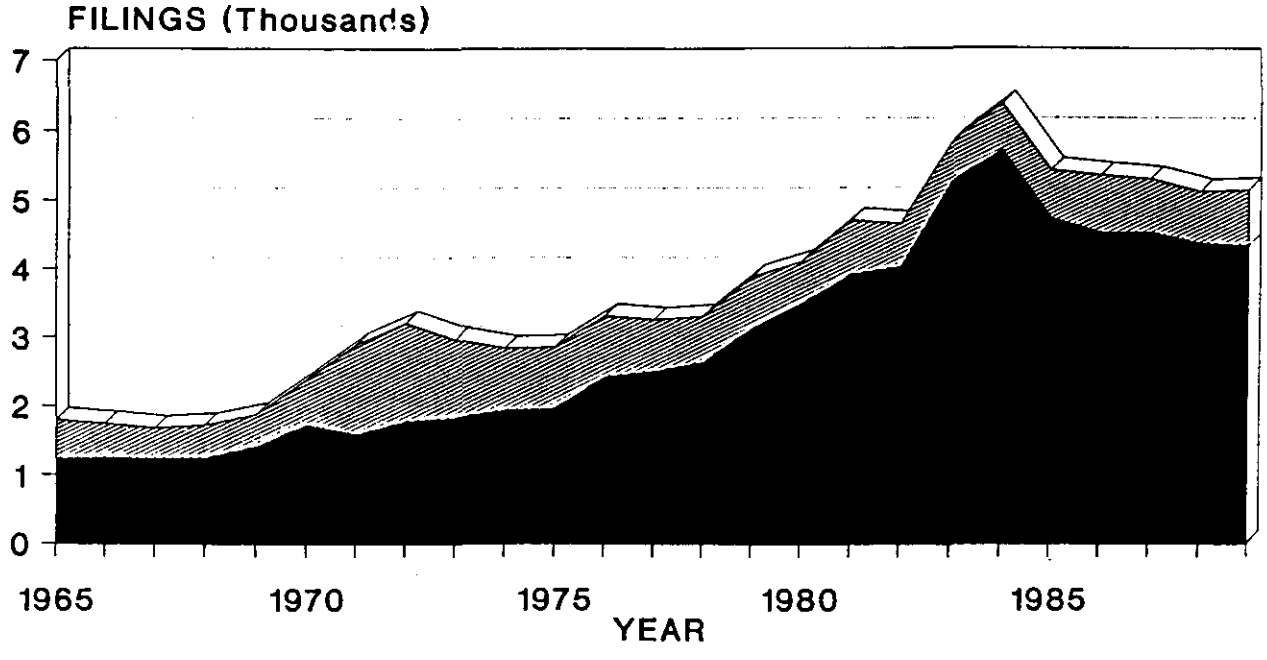


CHART 3

CIVIL AND CRIMINAL CASES COMMENCED
EASTERN DISTRICT OF NEW YORK 1965-1989



ENDNOTES

1. Diane Ketcham, *Long Island: Shores of Plenty, An Economic Celebration*, (Chatsworth, VA: Windsor Publications, 1988), p. 113.

2. Id. at 39, 18-19; Raymond Vernon, *Metropolis 1985* (Garden City: Anchor Books, 1960).

3. Bernie Bookbinder, *Long Island: Peoples and Places, Past and Present* (New York: Harry N. Abrams, Inc., 1983), p. 226.

4. Id. at 241.

5. Ketcham, *Long Island* at p. 19

6. United States Department of Justice, United States Attorney, Eastern District of New York, 1978 *Report* at 38.

7. "A History of the United States Court for the Eastern District of New York" (Federal Bar Association), pp. 16-20.

8. Interviews.

9. Frank L. Maraist, *Admiralty*, (St. Paul: West Publishing Co., 2nd ed. 1988), p. 43.

10. 314 F.Supp. 528 (Abruzzo 1970).

11. 313 F.Supp. 1373 (1970) *aff'd.* in part rev. and rem. in part 451 F.2d 800 (1971); 346 F.Supp. 962 (Judd 1972).

12. 346 F.Supp. at p. 965.

13. *Central Railroad Co. of New Jersey v. Tug Marie J. Turecamo*, 238 F.Supp. 145 (Zavatt 1965).

14. *Rickard V. Pringle*, 293 F.Supp. 981 (Abruzzo 1968).

15. *David & David, Inc. v. Myerson*, 277 F.Supp. 973 (Dooling, 1976).

16. *Acoustical Design, Inc. v. Control Electronics, Inc.*, CV 86-1692 (RR) (Raggi 1990).

17. *Reeves Brothers, Inc. v. U.S. Laminating Corp.*, 282 F.Supp. 118, 122 (Bartels 1968), *aff'd.* 417 2d 869 (1969).

18. *Erving v. Virginia Squires Basketball Club*, 349 F. Supp. 709 (*Neaher* 1972), 349 F.Supp. 716 (Neaher 1972).

19. *Nederlanse Draadinustrie NDI B.V. v. Grand Pre-Stressed Corporation*, 466 F.Supp. 846 (Bartels 1979), aff'd. w/o pub. op. 614 F. 2d 1289 (2d. C. 1979).

20. *Kuwait Airways v. Ogden Allied Aviation Services*, 726 F.Supp., 1389, 1390 (Dearie 1989).

21. *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982).

Endnotes continued

22. *In re Parr,* 3 B.R. 691 (Costantino 1979).

23. *In the Matter of Kras,* 331 F.Supp. 1207 (Travia 1971), reversed sub nom *United States v. Kras,* 434 U.S. 434, 451 at 457 (1973).

24. *Newsday* (Nassau and Suffolk ed.) May 3, 1989, p. 4. (Mishler).

25. 152 *Women's Wear Daily,* Oct. 1, 1986, p. 22 (Sifton).

26. *Legal Times,* July 15, 1985, p. 4 (Nickerson).

27. *Ives Laboratories, Inc. v. Darby Drug Co., Inc.,* 455 F.Supp. 939 (Nickerson 1978); 488 F.Supp. 394 (Nickerson 1980).

28. *Tripledge Products, Inc. v. Whitney Resources, Ltd.,* 1990 U.S. Dist. Lexis 4557 (Spatt 1990).

29. 65 Platt's Oilgram News No. 148, (Aug. 3, 1987), p. 5.

30. *In re Franklin Nat. Bank Securities Lit.,* 92 F.R.D. 468 at 469 (1981). See also in re Franklin Nat. Bank Securities Litigation, 381 F.Supp. 1390 (Judd 1974); aff'd in part, rev'd in part, rem'd 574 F.2d 662 (2d C. 1978), clarified 599 F.2d 1109 (2d C. 1979). See also under the same title, 73 F.R.D. 25 (Platt 1976); 445 F.Supp. 723 (Platt 1978), 449 F.Supp. 74 (Platt 1978); 478 F.Supp. 210 (Weinstein 1979). See also *Huntington Towers Ltd. v. Franklin Nat. Bank,* 559 F.2d 863 (2d C. 1977); *Hammond v. United States* (Platt 1975).

31. *New York Times,* Jan. 14, 1983, B-8; January 22, 1983, p. 22 (Glasser).

32. UPI, AM Cycle, Nov. 30, 1984. (Wexler).

33. *New York Times,* April 16, 1986. (Glasser).

34. UPI, December 1, 1987. (Dearie).

35. *Newsday* (Nassau and Suffolk ed.), Feb. 4, 1988, p. 24.

36. *Airline Pilots Assn. v. Texas Intern. Airlines, Inc.,* 502 F.Supp. 423 (Nickerson 1980).

37. *Blyer v. International Brotherhood of Teamsters,* 656 F.Supp. 1158 (Nickerson 1987); *AMR Sources Corporation v. International Brotherhood of Teamsters,* 658 F.Supp. 259 (Nickerson 1987).

38. *Air Transportation Association v. Professional Air Traffic Controllers Organization,* 313 F.Supp. 181 (Judd 1970), part. vac. 438 F.2d 79 (2d C. 1970), cert. den'd. 402 U.S. 915 (1971). *Airport Transport Association v. PATCO,* 453 F.Supp. 1287, 1294 (Platt 1978), aff'd 594 F.2d 851 (2d C. 1978); cert. den'd. 441 U.S. 944 (1979). See also *Airport Transport Association v. PATCO,* 516 F.Supp. 1108 (Platt 1981).

Endnotes continued

39. United States Department of Justice, United States Attorney Eastern District of New York, 1978 *Report* p. 1.

40. The other two are David G. Trager, now Dean of Brooklyn Law School, and Andrew Maloney, the present incumbent.

41. *Moss v. Morgan Stanley, Inc.,* 719 F.2d. 5 (2d C. 1983). The statute is Title IX of the Organized Crime Act of 1971, 84 Stat. 941, as amended 18 U.S.C. 1961-68.

42. *Sedima S.P.R.L. v. Imprex Company, Inc.,* 574 F.Supp. 963 (Glasser 1983), aff'd 741 F.2d 482 (2d C. 1984), reversed 473 U.S. 482 (1985).

43. *Congregation Beth Yitzhok V. Briskman,* 566 F.Supp. 555 (McLaughlin 1983) — dismissed on church-state grounds.

44. *County of Suffolk v. Long Island Lighting Company,* 685 F.Supp. 38 (Weinstein 1988).

45. *United States v. Porcelli,* 865 F.2d 1352 (2d C. 1989) affirming Judge Sifton.

46. *Manhattan Lawyer,* Sept. 26-Oct. 2, 1989 p. 1, 24 (Judge Glasser).

47. *United States v. (Joseph) Gallo,* 654 F.Supp. 463, 465 (Weinstein, 1987).

48. *United States v. (Carmine J.) Persico, Jr.,* 305 F.2d 534 (2d C. 1962) reversing Abruzzo; 349 F.2d 6 (2d C. 1965) reversing Rosling; 425 F.2d 1375 (2d C. 1970) affirming Weinstein and Dooling; 454 F.2d 721 (2d C. 1972); 359 F.Supp. 1077 (Travia 1972). See also *United States v. Dooling,* 406 F.2d 192, cert. den'd 395 U.S. 911 (1969) mandamusing Dooling.

49. Nickerson was the trial judge.

50. Judge Weinstein was the sentencing judge for both Armine and Gallo.

51. *See United States v. Ruggiero,* 678 F.Supp. 46, 48 n.1 (Costantino 1988) regarding the *en banc.* The three trial judges were Judges Costantino, McLaughlin and Bartels.

52. United States Department of Justice, United States Attorney Eastern District of New York, 1978 *Report,* p. 20.

53. *Chicago Tribune,* Sept. 23, 1987, p. 6; *Chicago Tribune,* Nov. 6, 1987, p. 12.

54. *Chicago Tribune,* Nov. 15, 1987, p. 10; UPI, BC Cycle, June 16, 1988; *Newsday*, March 3, 1989; *Manhattan Lawyer,* Nov. 21, 1989, p. 1. See *United States v. Biaggi* /and Esposito/, 674 F.Supp. 86 (Weinstein 1987) (interpreting the Travel Act); 673 F.Supp. 96 (Weinstein 1987) (denying contention that government had improperly used its challenges to jurors to include Italian-Americans from the panel).

55. *United States v. Richmond,* 550 F.Supp. 605 (Weinstein 1982).

56. UPI, AM Cycle, Feb. 3, 1986; Feb. 11, 1986. (Weinstein).

57. *New York Times,* April 12, 1987, B-3, June 27, 1987, p. 31; Nov. 13, 1987, B-3. (McLaughlin).

58. *United States v. Margiotta,* 688 F.2d 108 (2d C. 1982). See also 646 F.2d 729 (2d C. 1981); 662 F.2d 131 (2d C. 1981). Sifton was the trial judge.

59. See Robert W. Greene, *The Sting Man: Inside Abscam* (NY: E.P. Dutton, 1981).

60. See *United States v. Myers* 692 F.2d 823, 860 (2d C. 1982) cert. denied 103 S.Ct. 2437, 2438 (1983). Judge Mishler handled much of the pre-trial. Judge Pratt conducted the four separate trials.

61. *Chicago Tribune,* Nov. 15, 1987, p. 10; UPI, BC Cycle, June 16, 1988; *Newsday*, March 13, 1989; *Manhattan Lawyer*, Nov. 21, 1989, p. 1. (Judge Platt).

62. *New York Times*, August 5, 1988, p. A1. (Judge Nickerson).

63. *United States v. Southland Corp.*, 760 F.2d 1366 (2d C. 1985). The trial judge was Judge Sifton.

64. *United States v. Walsh,* 700 F.2d 846, 849-58 (2d C. 1983).

65. *United States v. Duggan,* 743 F.2d 59 (2d C. 1984). The trial judge was Sifton.

66. *National Law Journal,* Feb. 21, 1983. (Judge Sifton).

67. *New York Times,* May 1, 1986, p. B2. (Judge Glasser).

68. *New York Times*, October 27, 1987, p. B3 (Judge Glasser).

69. *United States v. Busic,* 592 F.2d 13 (2d C. 1978). The trial judge was Bartels.

70. *Ahmad v. Wigen,* 910 F. 2d 1063, 1066 (2d C. 1990).

71. *Swain v. Alabama,* 380 U.S. 202 (1965), overruled by *Batson v. Kentucky,* 476 U.S. 79 (1986); *McCray v. New York,* 103 S.Ct. 2438 (1983); *McCray v. Abrams,* 576 F.Supp. 1244 (Nickerson 1983).

72. *Stone v. Powell,* 428 U.S. 465 (1976).

73. *Quartararo v. Fogg,* 679 F.Supp. 212, 251 (Korman 1988).

74. *United States v. Falvey,* 540 F.Supp. 1306, 1312 (McLaughlin 1982).

75. *United States v. Main Street Distributing, Inc.,* 700 F.Supp. 655, 659 (Raggi, 1988).

76. *Berkman v. City of New York,* 536 F.Supp. 177 (Sifton 1982), aff'd 705 F.2d 584 (2d C. 1983); 626 F.Supp. 591 (Sifton 1985), aff'd in part, rev'd in part, 812 F.2d 52 (2d C. 1987), cert. denied 108 S.Ct. 146 (1987).

77. *Berkman v. City of New York,* 812 F.2d 52 (2d C. 1987).

78. *Berkman v. City of New York,* 580 F.Supp. 226, 230 (Sifton 1983), aff'd 755 F.2d 913 (2d C. 1985).

79. *Wirtz v. D'Armigene, Inc.,* 1 EPD 9746 (Zavatt 1966).

80. *Hill v. Berkman,* 635 F.Supp. 1228 (Weinstein 1986).

81. *Newsday* (Home ed.), March 29, 1990, p. 23; *Newsday* (Nassau ed.), April 17, 1990, p. 31. (Judge Mishler).

82. *Arthur v. Starrett City Associates,* 87 F.R.D. 542 (Neaher 1981). 98 F.R.D. 500 (Neaher 1983) *United States v. Starrett City Associates,* 605 F.Supp. 262 (Neaher 1985), 660 F.Supp. 668 (Neaher 1987), aff'd 840 F.2d 1096 (2d C. 1988), cert. den'd. 109 S.Ct. 376 (1988).

83. *Huntington Branch NAACP v. Town of Huntington,* 530 F.Supp. 838 (Costantino 1981), reversed 689 F.2d 391 (2d C. 1982), cert. den'd 460 U.S. 1069 (1983); 668 F.Supp. 762 (Glasser 1987), rev'd 844 F.2d 926 (2d C. 1988), aff'd 109 S.Ct. 278 (1988), reh'g denied, 109 S.Ct. 924 (1989).

84. Discussion of the Town of Huntington case is based upon Dona B. Morris, "Town of Huntington and the Development of the Discriminatory Effects Standards under the Fair Housing Act" (1989) (unpublished manuscript). See also Richard F. Bellman and Richard Cahn, "Housing Discrimination," 6 *Touro L.R.* 137 (1989).

85. *Lora v. Board of Educ. of NY,* 456 F.Supp. 1211 (Weinstein 1978) vac. & rem. 623 F.2d 248 (2d C. 1980); 580 F.Supp. 1573 (1984); *Board of Educ. of NY v. Califano,* 464 F.Supp. 1114 (Weinstein 1979), 584 F.2d 576 (2d C. 1978) aff'd. sub nom *Board of Educ. of NY v. Harris*, 444 U.S. 130 (1979); *Caulfield v. Board of Educ. of NY,* 449 F.Supp. 1203 (Weinstein 1978), rev. 583 F.2d 605 (2d C. 1978); 486 F.Supp. 862 (1979); *Campbell v. Board of Educ.*, 310 F.Supp. 94 (Weinstein 1970); *Knight v. Board of Ed.*, 48 F.R.D. 108 (Weinstein 1969), 48 F.R.D. 115 (Weinstein 1969).

86. *Hart v. Community School Board of Brooklyn, N.Y. Dist. 21,* 487 F.2d 223 (2d C. 1973); 383 F.Supp. 699 (Weinstein 1974), app. dism. 497 F.2d 1027 (2d C. 1974), 383 F.Supp. 769 (Weinstein 1974). See, generally, Jack B. Weinstein, "Equality, Liberty, and the Public Schools," 48 *Univ. Cincinnati L. Rev.* 203 (1979) esp. p. 207 n. 13.

Endnotes continued

87. *New York State Association for Retarded Children v. Rockefeller,* 357 F.Supp. 752 (Judd 1973).

88. See David J. Rothman and Sheila M. Rothman, *The Willowbrook Wars* (NY: Harper and Row, 1984), p. 219, 295. The second trial judge was Judge Bartels.

89. *Orlando v. Laird,* 317 F.Supp. 1013 (Dooling, 1970), 443 F.2d 1039 (2d C. 1971), cert. den'd, 404 U.S. 869 (1971).

90. *Berk v. Laird,* 429 F.2d 302 (2d C. 1970), 317 F.Supp. 715, 724, (Judd 1970), aff'd sub nom. *Orlando v. Laird,* 443 F.2d 1034 (2d C. 1971).

91. See Leon Friedman and Burt Neuborne, *Unquestioning Obedience to the President* (NY: W.W. Norton and Co., Inc., 1972).

92. *Holtzman v. Richardson,* 361 F.Supp. 544 (1973); *Holtzman v. Schlesinger,* 361 F.Supp. 553 (1973), stayed 484 F.2d 1307, (2d C. 1973) aff'd 414 U.S. 1304, 1316 (1973).

93. 410 U.S. 113 (1973).

94. *McRae v. Mathews,* 421 F.Supp. 533 (Dooling 1976), rem. *Califano v. McRae,* 433 U.S. 916 (1977); *McRae v. Califano,* 491 F.Supp. 630 (1980), rev. sub nom. *Harris v. McRae,* 448 U.S. 297 (1980).

95. *McRae v. Mathews,* 421 F.Supp. at 538.

96. *McRae v. Mathews,* 421 F.Supp. at 542.

97. *McRae v. Califano,* 491 F.Supp. 538.

98. *Harris v. McRae,* 448 U.S. 297, 317 (1980).

99. *United States v. Univ. Hosp. of State Univ. of New York,* 575 F.Supp. 607 (Wexler 1983), aff'd. 729 F.2d 144 (2d C. 1984).

100. *Baker v. Carr,* 369 U.S. 186 (1962); *Reynolds v. Sims,* 377 U.S. 533 (1964).

101. *United Jewish Organization of Williamsburgh v. Wilson,* 377 F.Supp. 1164 (Brucchausen, 1974) aff'd 510 F.2d 512 (2d C. 1975), aff'd sub nom. *United Jewish Organizations of Williamsburgh, Inc. v. Carey,* 430 U.S. 144 (1977).

102. *Morris v. Board of Estimate,* 551 F.Supp. 652 (Neaher 1982), rev'd 707 F.2d 686 (2d C. 1983); 592 F.Supp. 1462 (Neaher 1984) 647 F.Supp. 1463 (Neaher 1986), aff'd 831 F.2d 384 (2d C. 1987), aff'd 109 S.Ct. 1433 (1989).

103. *New York Times,* December 18, 1989, p. B-1.

104. *Pent-R-Books v. U.S. Postal Service,* 328 F.Supp. 297 (Judd 1971).

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105. *Greenberg v. Bolger,* 497 F.Supp. 756 (Weinstein, 1980).

106. *Bayer v. Kinzler,* 383 F.Supp. 1164 (Costantino 1974); *Romano v. Harrington,* 725 F.Supp 687 (Dearie 1989). See also 664 F.Supp. 675 (Dearie 1987).

107. *National Advertising Company v. Town of Babylon,* 703 F.Supp. 228 (Wexler 1989), aff'd 900 F.2d 551 (2d C. 1990).

108. *North Shore Right to Life Committee v. Manhasset American Legion Post No. 304, Town of North Hempstead,* 452 F.Supp. 834 (Weinstein 1978).

109. *Salem Inn, Inc. v. Frank,* 364 F.Supp. 478 (Bartels, 1973), aff'd 501 F.2d 18 (2d C. 1974), aff'd in part, rev'd in part sub nom. *Doran v. Salem Inn, Inc.* 422 U.S. 922 (1975).

110. *Pico v. Board of Education, Island Trees Union Free School District,* 474 F.Supp. 387 (Pratt 1979), rev'd and rem. *638 F.2d 404 (2d C. 1980)* [op. by Sifton], aff'd 457 U.S. 853 (1982).

111. *United States v. Kahane,* 396 F.Supp. 687 (Weinstein 1975), mod. sub nom. *Kahane v. Carlson,* 527 F.2d 491 (2d C. 1973).

112. *Sherr v. Northport-East Northport Union Free School District,* 672 F.Supp. 81 (Wexler 1981).

113. *Smith v. Board of Education,* 86 CV-0007 (Mishler 1987), rev'd. 844 F.2d 90 (2d C. 1988).

114. *Katcoff v. Marsh,* 582 F.Supp. 463 (McLaughlin 1984), aff'd. in part, rem. in part 755 F.2d. 223 (2d C. 1985). See also 599 F.Supp. 987 (Mishler 1980).

115. *Aqudas Chasides Chabad of United States v. Gourary,* 650 F.Supp. 987 (Sifton 1980).

116. See *New York Times,* December 18, 1985, B-1.

117. *Scenic Hudson Preservation Conference v. Federal Power Commission,* 354 F.2d 608 (2d C. 1968); 453 F.2d 463 (2d C. 1971); *Scenic Hudson v. Calloway,* 499 F.2d 127 (2d C. 1974).

118. See remarks of Chief Judge Oakes, *Second Circuit Newsletter* (Winter 1989).

119. *Newsday* (Nassau and Suffolk eds.): January 7, 1989, p. 14; June 23, 1989, p. 4. The trial judge was Platt.

120. *Town of Huntington v. Marsh,* 884 F.2d 648 (2d C. 1989). The trial judge was Mishler.

121. *Newsday* (Nassau and Suffolk ed.); Feb. 28, 1990, p. 20; *Newsday* (Nassau ed.), March 27, 1990, p. 29. Judge Mishler was the trial judge.

Endnotes continued

122. *New York Times,* April 14, 1989; PR News Wire, March 21, 1985. Judge Bramwell was the district judge.

123. *Newsday* (Suffolk ed.), April 19, 1988, p. 14. Judge Glasser upheld the regulation.

124. *Kennedy v. United States,* 643 F.Supp. 1072 (Wexler 1986).

125. United States v. Schmitt, 1990 U.S. Dist. LEXIS 4620 (Spatt 1990).

126. These facts are based upon Judge Altimari's opinion in *LILCO v. County of Suffolk,* 604 F.2d 759 (Altimari 1985) and Judge Weinstein's in *County of Suffolk v. LILCO,* 710 F.Supp. 1428, *1444-1445 (Weinstein 1989).*

127. County of Suffolk v. LILCO, 710 F.Supp. 1405 (Weinstein 1989).

128. *County of Suffolk v. LILCO,* 710 F.Supp. 1428 (Weinstein 1989).

129. 397 U.S. 254 (1970).

130. 375 F.Supp. 1312 (Travia 1974).

131. *Newsday,* (Nassau ed. November 1, 1988, p. 31). See *Canady v. Koch,* 598 F.Supp. 1139 (Glasser 1984).

132. Francis E. Rourke, book review of S.G. Mezey, *No Longer Disabled: The Federal Courts and the Politics of Social Security Disability, Political Science Quarterly* (Spring 1989) 175-176.

133. Jack B. Weinstein, "Equality and the Law: Social Security Disability Cases in the Federal Courts," 35 *Syracuse Law Review* 897, 900 (1984).

134. Id. at 931, 933, 935.

135. Id. at 926.

136. *Edwards v. Secretary of Department of Health and Human Resources,* 572 F.Supp. 1235 (Weinstein 1983).

137. 572 F.Supp. 1235 (Weinstein 1983).

138. 567 F.Supp. 188 (Altimari 1983).

139. *City of New York v. Heckler,* 578 F.Supp. 1109 (Weinstein 1984), aff'd 742 F.2d 729 (2d C. 1984).

140. *Windbourne v. Eastern Airlines,* 479 F.Supp. 1130 (Bramwell 1975); *Dispenza v. Eastern Airlines, Inc.* 508 F.Supp. 239 (Bramwell 1981).

141. *In re Air Crash Disaster at Warsaw Poland,* 16 AVI 17, 985 (Sifton 1981), 535 F.2d 833 (Sifton 1982), aff'd 705 F.2d 85 (2d C. 1983), cert. den'd 464 U.S. 845 (1983).

Endnotes continued

142. *In re Agent Orange Prod. Liab. Litig.,* 506 F.Supp. 737 (Pratt 1979), rev'd 635 F.2d 987 (2d C. 1980), cert. den'd 454 U.S. 1128 (1981)(federal common law); 597 F.Supp. 740 (Weinstein 1984), aff'd 818 F.2d 146 (2d C. 1987), cert. den'd 108 S.Ct. 2899 (1988). See "Procedural History of the Agent Orange Liability Litigation," 52 *Brooklyn L.Rev.* 335 (1986); Note: The Pratt-Weinstein Approach to Mass Tort Litigation, 52 Brooklyn L.Rev. 455 (1986); Peter H. Schuck, *Agent Orange on Trial: Mass Toxic Disasters in the Courts* (Cambridge, MA: Harvard University Press, enlg. ed. 1987).

143. Report of the Subcommittee on Management of the District Court, Report of the Advisory Committee on Planning for the District Court (Draft Report March 1, 1981), 57, 60.

144. This section was closely based upon the Annual Report of the United States Probation Office Eastern Division of New York for the Year 1989. [A special edition containing a history of the office on the occasion of its 60th anniversary.]

145. Remarks of Chief Judge Thomas C. Platt, Special Session Commemorating the 125th Anniversary of the United States District Court for the Eastern District of New York, March 22, 1990 (Court Reporter's transcript), 2, 7-10.

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