

**A BRIEF HISTORY OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE**

Prepared by Neal Allen at the request of the Court
and of the Maine Commission to Commemorate the Bicentennial
of the United States Constitution,

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to mark the Bicentennial of the Judiciary Act of 1789
and the Bicentennial of the District of Maine.

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On December 8, 1790, George Washington appeared before the Congress to deliver his second Annual Message. It was brief, as such performances go, but it contains a passage that might stand as the beginning of our story.

"The Laws you have already passed for the establishment of a judiciary system," he said, "have opened the doors of justice to all descriptions of persons."

The first President of the United States had particularly in mind the famous Judiciary Act of September 24, 1789. The authors of a recent history of our Constitution have written that "no law enacted by the first session of Congress was of greater importance." It is that famous legislation and the national judicial institutions that it created, that we celebrate this year and next. Here in Maine, we have special reason to mark the anniversary, for Maine was, under the terms of the Act, a separate judicial district; self-standing, not a part of the Federal Judicial District of Massachusetts. Moreover, the United States District Court for the District of Maine has earned in the two centuries that have passed an enviable reputation, a solid place in American judicial history.

Under the Judiciary Act of 1789, thirteen District Courts were established: one each in those eleven states that had, by September 1789, ratified the Constitution and, as noted, one each in Maine (then a part of Massachusetts) and Kentucky (which was still a part of Virginia). In addition, three circuits were created by the Act. Each circuit had a Circuit Court of general trial jurisdiction and intermediate appellate authority. These Circuit Courts were composed of two Justices of the United States Supreme Court along with the District Court Judge of that district where the Circuit Court was sitting. What makes the place of Maine (and Kentucky) of special interest is, that these two Districts were not included within any Circuit. Thus, their District Courts exercised both District Court and Circuit Court jurisdiction. This meant that in addition to regular District Court jurisdiction in admiralty cases, and over petty Federal crimes and minor Federal plaintiff cases, the Maine and Kentucky District Courts had the wide powers of a trial court that the Act had placed primarily in the Circuit Courts: over cases of diversity of citizenship, major federal crimes, and those larger cases where the United States was a plaintiff. The only part of the Circuit Courts' jurisdiction that Maine and Kentucky did not possess was the intermediate appellate jurisdiction that (somewhat rarely) the regular Circuit Courts exercised over the larger admiralty and civil cases of the District Courts. Judge David Sewall, the first District Court Judge for Maine, gave a clear description of the powers that his Court possessed. In an address in June 1790 to the grand jury that had been called to consider charges against Thomas Bird and Hans Hanson, accused of piracy and murder on the high seas, Sewall told his listeners:

But the district Courts of Maine and Kentucky have severally much larger powers and Authority: for they have in addition to the powers vested in other district Courts in the Union, jurisdiction of all causes made cognizable in Circuit Court, except Writs of Error and Appeal [underlining in the original].

It is perhaps remarkable that in the two hundred years since the United States District Court for the District of Maine first sat on December 1, 1789, only

twelve persons have occupied the position of district judge. Not counting the present incumbents, Chief Judge Conrad Cyr and Judge Gene Carter, this means that the average tenure of each judge has been just over nineteen years. The figure would be higher, were it not that two judges of the Court, Albion Parris (1818-1821) and George Mitchell (1979-1980) each left the bench after serving only briefly, to assume high political office. Parris resigned to stand successfully for election to the office of governor of the State, Mitchell to serve out the unexpired U.S. Senate term of Edmund Muskie, who had been named Secretary of State by President Carter.

The Business of the Court

A system of national courts was felt to be especially necessary in the area of maritime law. The problems that led first to the Annapolis Convention of 1786 and then to the calling of the Constitutional Convention of 1787, had reflected the deep concern of many Americans over unregulated and potentially disruptive commercial rivalries between and among the states. Even those who had attacked the idea of creating any lower federal courts, generally had made an exception for courts of admiralty. Alexander Hamilton, in The Federalist No. 80 put it this way:

The most bigoted idolizers of state authority, have not thus far shown a disposition to deny the National Judiciary the cognizance of maritime cases.

The Federal District Court in Maine was destined to have an important role in the evolution of American maritime law, especially in the first century of the Court's existence. In June, 1790, Maine's first District Court Judge David Sewall had been in office for only six months. In the first week of June he presided over the first capital case that was ever tried in a United States court: the trial of Thomas Bird and Hans Hanson for piracy and murder on the high seas. On June 5, Bird, an Englishman, was found guilty; Hanson, a Norwegian, was acquitted. Bird was hanged June 25. The case had been commenced about a year earlier, before the Supreme Judicial Court of Massachusetts. But the passage of the Judiciary Act in September, 1789, meant an important change. The new Federal District Court, with its jurisdiction in admiralty and possessing the wide trial powers of the original Circuit Courts, became the forum for the trial.

Sewall's manuscript Docket Book for 1800-1803 (in the collection of the Maine Historical Society) is evidence that maritime law, including enforcement of customs regulations, dominated the business of his Court. That continued to be so until after the Civil War, and even then, of course, the Court's admiralty powers remained, and still remain, an important part of its work. During the long tenure of Ashur Ware, 1822-1866, this was especially true. Ware made significant contributions to the growth and refinement of American admiralty jurisprudence. Supreme Court Justice Joseph Story thought that Ashur Ware was perhaps the most accomplished admiralty judge in the country. Under Ware's successor, Judge Edward Fox (1866-1881), the Court continued to be an important forum for maritime cases.

Economic depression brings legal problems, and the bankruptcies that depressions foster were matters for the District Court. The 1870's and 1880's saw a good many cases of that kind. Patent law, too, is in the jurisdiction of the Federal government. What could be more redolent of Maine and New England than

a dispute over the canning of baked beans? Judge Nathan Webb faced that issue in a patent case, and delivered some homely judgments on the virtues of that old New England Saturday night staple. More seriously, the rapid growth of technology, new forms of corporate organization and the emergence of organized labor as a powerful force led to a vastly more complex and varied agenda in the Federal, as in the State, courts.

In our century, the growth of national administrative agencies and the large body of Federal regulatory law has contributed enormously to the rapidly increasing case load of the Federal District Court. Any examination of the current volumes of the Federal Reporter will provide ample proof of the fact.

On the criminal side, it can come as no surprise that smuggling and its associated activities have been important in the work of Federal courts, especially in coastal states like Maine. From violations of Jefferson's Embargo Act of 1807, through the era of Prohibition, and into the world of the international drug traffic of the later twentieth century, Federal officials and the Federal Courts have been at the center of enforcement of national law in this increasingly serious area of criminal activity.

Changes in Structure and Functions

In this very brief survey there is neither space nor time to describe the many changes that have marked the structure and functions of the lower Federal courts. The most obvious and substantial changes first affected the Circuit Courts. As early as 1801 and 1802, successive acts of Congress altered the number of Circuit Courts and the number of Circuit Court judges. The Federalist Act of 1801 had enlarged the number of circuits and provided for separate circuit judges; the Republican Act of 1802 retained the larger number of circuits but abolished the separate judges and reduced somewhat the Supreme Court Justices' circuit-riding obligations. Throughout the nineteenth century Congress continued to legislate changes; the most significant was the so-called Evarts Act, the Circuit Court of Appeals Act of 1891. Its main effect on the District Courts was finally to vest in them primary responsibility for Federal trials, though their complete monopoly of trial business did not come until 1911.

One important change for the United States District Court for the District of Maine took place in 1978. In October of that year the Federal District Court Organization Act provided for the appointment of a second judge for the District. George J. Mitchell was nominated and confirmed and, on November 2, 1979, joined then-Chief Judge Edward T. Gignoux on the bench. Maine continued to consist of one District, but the addition of a second judge enabled the Court to sit simultaneously at Bangor and Portland, eliminating problems of venue and benefitting its docket and caseload.

These and other changes -- in jurisdiction, in procedure, in the number and allocation of judges, in the creation of special courts and judges -- at first strike one as so great that the original Act of 1789 has been obliterated. But, as noted in the Federal Judicial Center's booklet, Creating the Federal Judicial System, the "... basic design of 1789 has endured." The part of that design which is the Federal District Courts has grown in scope -- the original thirteen Districts have become 94 and there are now 575 District Judges -- and has evolved in the ways in which it carries out its work. For example, a 1793 statute authorizing the then-Circuit Courts to appoint persons to take bail was the beginning of the

present-day office of United States Magistrate; legislation in 1968 and 1979 enlarged and better defined the powers of the office and designated the holder, who had been called Commissioner, as Magistrate. With all of these changes, the United States District Court remains, in essential matters, what the framers of the Judiciary Act of 1789 intended: a federal trial court of broad jurisdiction, one that has (to use George Washington's expression in the quotation above) "opened the doors of justice to all descriptions of persons." The United States District Court for the District of Maine has been an important representative of that ideal.

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The foregoing is a brief preliminary account of the history of the Court. A more extended history is in preparation. It will include biographical notes on the Judges and the Clerks; a fuller analysis of the business of the Court over its history; and an account of the locations of the several buildings and courthouses where the Federal District Court for the District of Maine has sat.

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THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MAINE

David Sewall
1789-1818

Albion K. Parris
1818-1821

Ashur Ware
1822-1866

Edward Fox
1866-1881

Nathan Webb
1882-1902

Clarence Hale
1902-1922 (retired status to 1934)

John A. Peters
1922-1947

John D. Clifford, Jr.
1947-1956

Edward T. Gignoux
1957-1983 (senior status, 1983-1988)

George J. Mitchell
1979-1980

Conrad K. Cyr
1980-

Gene Carter
1983-