ATTENDING TO THE NATION'S BUSINESS WITHIN THE COMMONWEALTH

A Brief Historical Survey of the Anomalous Role of the United States District Court in the Massachusetts Judicial System

*Hon. Douglas P. Woodlock**

In 1879 the bar of the federal court of Massachusetts had become sullen, if not mutinous. Thomas L. Nelson, an inland lawyer — from the "port of Worcester," no less — had been named to what was known popularly as the "Admiralty Court" and the members of the bar "were not inclined to receive Nelson's appointment very graciously."[1]

Judge Thomas L. Nelson.

For the first century of its existence the United States District Court for the District of Massachusetts had been so intimately involved with the maritime concerns of the commonwealth that the new nation's *nisi prius* court in Massachusetts had taken its popular name from that of the reviled colonial Vice Admiralty Court and "the lone judge who presided came often to be known as the 'Judge of Admiralty.'"[2] But now President Hayes had not only chosen a lawyer with no admiralty experience to preside, he had declined to appoint one of the leading young admiralty practitioners, Oliver Wendell Holmes, Jr., to the federal judgeship for which he and his champions at the recognized federal bar in Massachusetts believed him singularly suited.[3]

Some twenty years later, upon Judge Nelson's death in Worcester, where he invariably returned after the conclusion of his sessions in Boston — then the only place of holding federal court in Massachusetts — the federal bar acknowledged his success on "their" bench. It had taken

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** The illustrations which accompany this article are provided courtesy of the First Circuit History Society.

1. GEORGE F. HOAR, 2 AUTOBIOGRAPHY OF SEVENTY YEARS 420 (1903).

2. Hiller B. Zobel, *Those Honorable Courts - Early Days on the First Circuit*, 73 F.R.D. 511, 512 (1976).

3. *See generally*, Mark L. Wolf, *Few Are Chosen: The Judicial Appointments of Oliver Wendell Holmes, Jr., and Charles Edward Wyzanski, Jr.*, 74 Mass. L. Rev. 221, 222 (1989).

"some years before he established a high place in their confidence and esteem"[4] but the words of the Memorial presented by the bar at a proceeding convened to mark his passing were gracious: "[t]hose who, as his associates upon the bench, or as practitioners before him at the bar, have had occasion to watch his long and honorable career, now feel that the judgment of his friends was the best and that his appointment has been justified."[5]

The judicial career of Judge Nelson in many ways encapsulated the special qualities of the United States District Court for Massachusetts and its relation to the judicial system of the commonwealth.[6]

First, the limited jurisdiction exercised by the federal district court is largely specialized, animated by national policies and, to that extent, distinguishable from the general jurisdiction of the Commonwealth's "Great Trial Court," the Superior Court.

Second, the ultimate decisions regarding appointments are guided by "friends" in Washington, who may or may not share the sentiments of the bar in the commonwealth.

Third, mastery of the court and its work can be achieved even by those uninitiated in its specialties if they bring native capacity and apply it with diligence.

But finally, and fundamentally, there is an anomalous quality to the federal court's role in the commonwealth's legal structure. The federal courts are both a part of and apart from the local community; they both reflect and reflect upon the community, its institutions and its senti-

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4. HOAR, *supra* note 1, at 420.

5. *Proceedings of the Bench and Bar of the Circuit Court of the United States District of Massachusetts, Upon the Decease of Hon. Thomas Leverett Nelson*, 6 (January 26, 1898).

6. The focus of this paper will be on the trial court of the federal system, the United States District Court, and its judges. The District Court was established as the first level trial court in the federal system by the Judiciary Act of 1789. A second level trial court, the Circuit Court, was also created by that Judiciary Act. The Circuit Court was served by the District Court judge for the District in which the Circuit sat together with one or more Supreme Court justices sitting on Circuit. The Circuit Court also sat as an appellate tribunal for certain District Court decisions. Although the Circuit Justices with responsibility for the District of Massachusetts, especially Justices Joseph Story and Benjamin Robbins Curtis, were very active in performing their Circuit Court duties, the trial duties of the Circuit Court frequently fell upon the District Judges. In 1869, separate Circuit Judgeships were established for the first time - apart from the shortlived Circuit Courts created by the Judiciary Act of 1801. The trial responsibilities of the Circuit Courts were finally abolished in 1911 and since that time the District Court has been the sole trial court in the federal system.

ments. An appreciation for this quality can be derived from even a brief survey of the history of the federal courts in Massachusetts.

The history of the federal courts in Massachusetts may be divided into three periods. Each period witnessed development of a distinctive aspect to the separate role of the federal courts in the Commonwealth's legal system.

The initial, or classical period, during which the basic but limited jurisdiction of the federal courts was defined and exercised, extended from their establishment in 1789 until 1935, when challenges to New Deal initiatives confronted the Massachusetts federal bench.

The transitional period, involving realignment of the role of the federal courts as a consequence of the New Deal and the doctrine of *Erie v. Tompkins*, can be dated from 1935 to 1959, when the first of the judges to have served in World War II was appointed.

The current period, from 1960 to the present, finds the modern Massachusetts federal court concerned with the problem of policing the governmental institutions of the commonwealth.

The development of the several aspects to the role of the federal court has been cumulative and, to some degree, aspects to the role which later became prominent were foreshadowed in earlier periods. Nevertheless, this linear taxonomy provides a legible approach to the history of the federal court in Massachusetts over the past two centuries.

I. The Classical Period

In the controversy over the creation of the lower federal courts, even the opponents of a separate federal judiciary "conceded the need for federal admiralty courts, and... this concession was an important part of the argument that, strange as it seems, proved decisive in persuading the Senate to vote to establish lower federal courts."[7] The recognition of the need for national courts to deal uni-

7. DAVID W. ROBERTSON, ADMIRALTY AND FEDERALISM 23 (1970); *see also* GERHARD CASPER, *The Judiciary Act of 1789 and Judicial Independence, in* ORIGINS OF THE FEDERAL JUDICIARY: ESSAYS ON THE JUDICIARY ACT OF 1789, 281, 293 (Maeva Marcus ed., 1992) ("even the opposition agreed that the admiralty jurisdiction belonged in the hands of the federal courts").

formly with the principal form of eighteenth century national and international business had a firm foundation in the concerns of the business and legal communities of Massachusetts.

A. *Attending to Business*

The First Judge John Lowell.

At the outset, the Federal District Court was seen as the successor to the colonial Vice Admiralty Court established before the American Revolution by the High Court of Admiralty in London.[8]

Indeed, the first Massachusetts federal judge, John Lowell, served on the only American national court established before the adoption of the Constitution: The Court of Appeals for Claims and Capture established under the Articles of Confederation. This court, which addressed war time seizures of vessels, apparently sat from time to time in Boston while John Lowell was a member. Given that the Continental "Congress appointed him one of three judges of appeals in admiralty cases, a post for which his experience in maritime law peculiarly fitted him,"[9] it was predictable President Washington would appoint Judge Lowell in 1789 as the first United States District Judge for the District of Massachusetts.

When Joseph Story, who would later direct the course of federal admiralty jurisdiction as a United States Supreme Court Justice, practiced at the bar before the federal courts in Boston presided over by Judge Lowell and thereafter by Judge John Davis, the "district court [was] generally re-

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8. *See generally,* L. Kinvin Wroth, *The Massachusetts Vice Admiralty Court and the Federal Admiralty Jurisdiction,* 6 Am. J. Legal Hist. 250 (1962).

In this connection it bears noting that of the silver oars - the distinctive maces evidencing Great Britain's commission of Vice Admiralty Courts in the Americas - only two are known still to exist in the United States. One, that of the Massachusetts Vice Admiralty Court, is owned by the Massachusetts Historical Society and is now on display with the silver collection of the Museum of Fine Arts in Boston. The other - that for New York - is owned by the United States District Court for the Southern District of New York in Manhattan and is held by the Museum of the City of New York. *See generally,* Brainerd Currie, *The Silver Oar and All That: A Study of the Romero Case,* 27 U.Chi. L. Rev. 1, 75-78 (1959).

9. Ferris Greenslet, The Lowells and Their Seven Worlds 72 (1946).

ferred to simply as the 'admiralty' court, because it dealt almost exclusively with maritime matters."[10]

The Massachusetts federal courts from their inception have been a rich source of the basic principles of American maritime law. After Joseph Story came to the Supreme Court in 1811, a major part of his duties was service as Circuit Justice for the United States Circuit Court for the District of Massachusetts, then a trial court. His opinion for that court in *De Lovio v. Boit*[11] remains the classic statement of the case for a broad nationalist interpretation of the Admiralty jurisdiction of the federal court and "set the style for later courts . . . ."[12]

The Massachusetts federal courts were especially active in filling out the substance of that broad jurisdiction. A basic rule of the road for shipping, for example, was established when the third United States District Judge, Peleg Sprague, announced the principle of sail over power.[13]

The Second Judge John Lowell.

Moreover, the standards for the sympathetic and humane supervision which the federal courts exercise over the claims of seamen were developed by both bench and bar of the Massachusetts federal court. The second Judge John Lowell, a great grandson of the first Judge John Lowell, who became the fourth United States District Judge for the District of Massachusetts in 1865, colorfully captured the flavor of the judicial standards in Massachusetts when he observed in one case that "[c]ourts of admiralty are not very severe with seamen who happen to get drunk once or twice."[14]

Massachusetts federal judges were prompted in turn to develop these standards by such Massachusetts federal court advocates as Richard Henry Dana, who authored the classic seaman's autobiography, *Two Years Before the Mast,* before he came to the bar. Dana's efforts on behalf of the

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10. R. KENT NEWMYER, SUPREME COURT JUSTICE JOSEPH STORY: STATESMAN OF THE OLD REPUBLIC 65 (1985).

11. 7 F.Cas. 418 (C.C.D. Mass. 1815) (No. 3776).

12. GRANT GILMORE & CHARLES L. BLACK, THE LAW OF ADMIRALTY 21 (2d ed. 1975).

13. The Osprey, 18 F.Cas. 884 (D. Mass. 1854) (No. 10,606).

14. The El Dorado, 8 F.Cas. 406, 407 (D. Mass. 1868) (No. 4327).

proverbial seaman, "Jack Tar," caused the great maritime historian Samuel Eliot Morison to observe: "Many well meaning people endeavored to save Jack's soul, philanthropists provided him with a snug harbor for his old age; Dana endeavored to obtain him justice."[15]

Following the Civil War, the federal courts of Massachusetts continued to focus on maritime matters. The memorial speakers of bench and bar after the death of the second Judge Lowell, directed their comments to his admiralty work. One observed:

> A large portion of the two volumes of "Lowell's Decisions" is devoted to cases of mutinies, collisions, salvage, prizes, etc., with all of which the learned judge seemed to have been so familiar and sailor-like that it has been said, "They smell of the sea; you can almost smell the tar, almost hear the wind whistling through the rigging."[16]

Another contributor to the Memorial Proceedings noted that:

> It devolved upon him to lay down rules for the title to whales in the Sea of Okhotsk; to value Leviathan and "part him among the merchants"; awarding to the sign of actual capture floating on far-off northern seas the right which "his skin" filled "with barbed irons or his head with fish spears might not prove"; to apportion prize money among the ships of our great Captain Farragut in the Bay of Mobile; to adjudicate upon the legality of the sale of a Confederate ship of war after her successful cruise against our commerce.[17]

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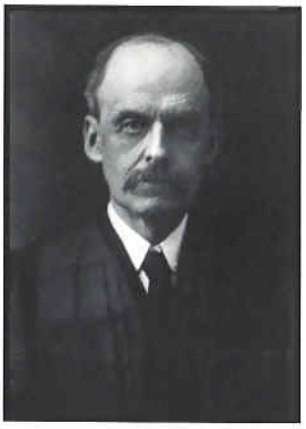
15. SAMUEL ELIOT MORISON, THE MARITIME HISTORY OF MASSACHUSETTS, 1783-1860, 227 (1914).

16. *Proceedings of the Bench and Bar of the Circuit Court of the United States, District of Massachusetts Upon the Decease of Hon. John Lowell* 23 (June 19, 1897) (Remarks of Hon. William L. Foster).

17. *Id.* at 10 (Remarks of Hon. George S. Hale).

The importance of the admiralty jurisdiction to the business of the federal courts in Boston continued throughout the nineteenth century and was considered a major qualification for judicial selection. When a vacancy occurred on the District Court in 1878 with the elevation of the second Judge Lowell to the Circuit Court, the name of Oliver Wendell Holmes, Jr., was pressed on the Hayes administration as a successor because "[t]he business of the court . . . will be mainly in admiralty, and of admiralty law Holmes's knowledge is singularly exact and profound."[18] And when, as noted, President Hayes instead chose Thomas L. Nelson of Worcester, an associate of Senator George Frisbie Hoar, a wave of disappointment and apprehension swept over the federal bar.

Although Judge Nelson became competent in admiralty matters, after he died the selection process for federal judges in Massachusetts throughout the remainder of the nineteenth and into the early twentieth century again centered on prior admiralty experience. The vacancy created by Judge Nelson's death was filled by Francis Cabot Lowell, the third Judge Lowell — a great-great-grandson of the first Judge Lowell — whose learned admiralty opinions continue to attract the attention of modern scholars.[19] And Judge Frederic Dodge, who succeeded the third Judge Lowell, was a founder and long term board member of the Maritime Law Association.



Judge Frederic Dodge.

It was not merely maritime commerce which made up the docket of the nineteenth century federal district court, of course. The federal courts also, for example, exercised jurisdiction in bankruptcy. The second Judge John Lowell, in particular, established himself as a judicial authority on bankruptcy matters after Congress passed the National Bankruptcy Act of 1867. He prepared a treatise on bankruptcy law that was published following his death by his son James Arnold Lowell, who himself

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18. M. Howe, 2 Justice Oliver Wendell Holmes - The Proving Years, 1870-1882, 131 (1965) (recommendation of John Chipman Gray).

19. *See, e.g.*, Wroth, *supra* note 8, at 252 n.7.

would later become the fourth Judge Lowell of the United States District Court for the District of Massachusetts in 1922.

Because the second Judge Lowell was uniquely successful in the administration of bankruptcy law "not merely to the satisfaction of the bar, but to the approval of the mercantile class of the community whose interests are most affected by this law, who are perfectly able to understand it and to judge whether it is wisely administered, and in the spirit of justice and fair dealing upon which it is founded,"[20] the business community held a public dinner for him when he retired from the bench in 1884. Judge Lowell found the tribute especially gratifying "as a proof that his administration of the Bankrupt Law had not only been in accord with the strong common sense of the business men of the community, but also with the principles of justice and equity which it has been the aim of every well-intended law of Bankruptcy to carry out."[21]

B. *Enforcing National Policy*

The law developed by eighteenth and nineteenth century Massachusetts federal judges concerned more than the quotidian activities of commerce. The commercial jurisdiction of their court drew Massachusetts federal judges into resolution of the most fundamental issues facing the nation.

Judge John Davis, for example, exercising seemingly mundane customs jurisdiction, found himself confronting the first major challenge to the continued union of the United States. A committed Federalist, appointed to the federal bench in 1801 by President Adams, Davis was called upon to rule on the Embargo Acts then decimating New England commerce. Federalists anticipated a decision

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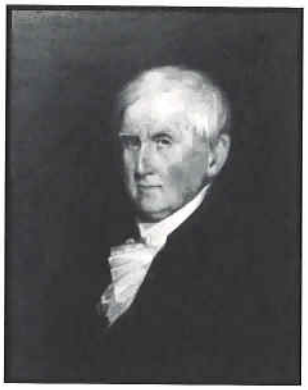
20. Thornton K. Lothrop, *John Lowell, in* 35 PROCEEDINGS OF THE AMERICAN ACADEMY OF ARTS AND SCIENCES 634, 639-40 (1900).

21. *Id.* at 640. Judge Lowell was also prepared to receive the tribute with ironic good humor. When opening the dinner program, "the chairman began his address as follows: 'Gentlemen of the Boston Merchants Association, we have met to-night to do honor to Judge Lowell, upon his retirement from the bench of the Circuit Court of the United States.' (*Applause.*) Upon this Judge Lowell remarked, in an aside to Judge Devens, 'They applaud because I have resigned.'" Note 16 *supra* at 23 (Remarks of Hon. William L. Foster).

striking down the hated Embargo, thereby thwarting the heretical policies of the Virginia Republicans, President Thomas Jefferson and his Secretary of State, James Madison. Enforcement actions were brought against Embargo violators in Salem, the unofficial capital of the Essex Junto and opposition to the Embargo.

Judge John Davis.



In what the venerable legal historian Charles Warren called "one of the most striking illustrations of judicial impartiality rising above . . . partisan influence to be found in the history of the law,"[22] Judge Davis upheld the Embargo.[23] The conclusion of his opinion, described by Professor Warren as the judicial decision "which probably affected the history of the nation to a greater degree than any judicial opinion ever rendered in this Commonwealth,"[24] is a judicial encomium to commerce, as befits a court whose first concern was attending to the nation's business:

> I lament the privations, the interruption of profitable pursuits and manly enterprize, to which it has been thought necessary to subject the citizens of this great community. . . . Commerce, indeed, merits all the eulogy, which we have heard so eloquently pronounced, at the bar. It is the welcome attendant of civilized man, in all his various stations. It is the nurse of arts; the genial friend of liberty, justice and order; the sure source of national wealth and greatness; the promoter of moral and intellectual improvement; of generous affections and enlarged philanthropy . . . . Let us . . . hope, that commercial activity and intercourse, with all their whole-

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22. CHARLES WARREN, 1 THE SUPREME COURT IN UNITED STATES HISTORY 347 (1926); *See generally*, Hiller B. Zobel, *Pillar of the Political Fabric: Federal Courts in Massachusetts, 1789-1815*, 74 Mass. L. Rev. 197, 202-03 (1989).

23. United States v. The William, 28 F.Cas. 614 (D. Mass. 1808) (No. 16,700).

24. Charles Warren, *The Early History of the Supreme Court of the United States in Connection with Modern Attacks on the Judiciary*, 8 Mass. L.Q. (No. 2) 1, 20 (1922).

> some energies will be revived and, that our merchants and our mariners will, again, be permitted to pursue their wonted employments, consistently with national safety, honour and independence![25]

National concern with a different kind of property thrust the federal courts of Massachusetts into larger national policy debates in the mid-nineteenth century. The passion of these debates was underscored by the fact that in 1854 a Deputy United States Marshal was murdered in the federal courtroom of the Suffolk County Courthouse when a mob swept through and attempted to liberate a prisoner appearing for an extradition proceeding. The property and prisoner under consideration were one: a fugitive slave whom the federal courts were required to return to his owner under the federal fugitive slave laws.

The tensions created in Massachusetts by the enforcement of these laws in the federal courts ultimately led to the removal of the federal courts from their tenancy in the Suffolk County Courthouse to a series of separate federal buildings.[26] Suffolk County Probate Judge Edward Greely Loring, who also functioned as a United States Commissioner in enforcing the fugitive slave laws, was ultimately removed from his state judicial office as a result of his official federal acts enforcing fugitive slave law.[27]

Confronting his own obligations under the fugitive slave law, Circuit Justice Benjamin Robbins Curtis, sitting in the District of Massachusetts, reflected on the independence of the national judiciary in a series of opinions. "The sole end of courts of justice," Curtis wrote, "is to enforce the laws uniformly and impartially, without respect of persons or times, or the opinions of men."[28] Yet he was also acutely aware of the sensitivity of his position: "[t]o enforce popular laws is easy [, b]ut . . . when a law, unpopular in some locality, is to be enforced there, then comes the strain upon

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25. 28 F.Cas. at 623-24.

26. Douglas P. Woodlock, *The "Peculiar Embarrassment": An Architectural History of the Federal Courts in Massachusetts*, 74 Mass. L. Rev. 268, 272 & *passim* (1989).

27. *See generally*, ALAN J. DIMOND, THE SUPERIOR COURT OF MASSACHUSETTS: ITS ORIGIN AND DEVELOPMENT 3-8 (1960).

28. United States v. Morris, 26 F. Cas. 1323, 1336 (C.C.D. Mass. 1851) (No. 15,815).

the administration of justice . . ."[29] Nevertheless, Curtis, who later was to dissent from the disastrous *Dred Scott* decision upholding slave owner rights[30] contended that it was the responsibility of the federal courts to enforce even locally unpopular laws to ensure a higher good. Charging the grand jury investigating the events surrounding the murder of the Deputy Marshal, Curtis observed:

> If forcible resistance to one law be permitted practically to repeal it, the power of the mob would inevitably become one of the constituted authorities of the State, to be used against any law or man obnoxious to the interests and passions of the worst or most excited part of the community; and the peaceful and the weak would be at the mercy of the violent.[31]

Judge Peleg Sprague.

When the volatile accommodations, such as the fugitive slave laws, fashioned to hold the Union together, unravelled with the Civil War, the District of Massachusetts was again drawn by its unique jurisdiction into a consideration of national policy. Exercising the prize jurisdiction of an admiralty court, Judge Peleg Sprague was called upon to rule regarding the powers of the President to direct the seizure of enemy vessels during hostilities. The leading opinion on the issue, *The Prize Cases*,[32] described in the definitive history of the Supreme Court of the United States as "a landmark in the history of the Court and of the country," a case "cited in all civilized countries,"[33] originated in the Massachusetts federal district court and still stands in modern times as important

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29. *Id.*

30. Dred Scott v. Sandford, 60 U.S. (19 How.) 393, 564 (1857) (Curtis, J., dissenting).

31. Benjamin Robbins Curtis, *A Charge To the Grand Jury On the Offence of Obstruction of Justice (June 7, 1854),in* 2 A MEMOIR OF BENJAMIN ROBBINS CURTIS LL.D. WITH SOME OF HIS PROFESSIONAL AND MISCELLANEOUS WRITINGS, 205, 211 (1879).

32. 67 U.S. (2 Black) 635 (1863).

33. CARL B. SWISHER, 5 HISTORY OF THE SUPREME COURT OF THE UNITED STATES: THE TANEY PERIOD 1836-64, 899 (1974).

precedent for unilateral war-like interventions by the President of the United States. The first named of *The Prize Cases*, the *Amy Warwick*, was shaped by the advocacy of Richard Henry Dana, then the United States Attorney for the District of Massachusetts, and by the opinions of Judge Sprague.[34]

C. *The Melting Pot Begins to Spill Into the Federal Courts*

Throughout the nineteenth and into the twentieth century, the bench and the bar of the federal courts in Massachusetts remained the domain of the Brahmin Yankee mercantile class. All the judges were Harvard men — with the exception of the inland lawyer Judge Nelson, who attended Dartmouth and the University of Vermont. Indeed three of the six judges appointed before the end of the nineteenth century were Lowells, a family whose only extrajudicial interlocutors were reputedly Cabots and through them God.[35]

In 1912, when President William Howard Taft gently raised the possibility that the time had come to look beyond the Back Bay/Brahmin class for candidates for federal judgeships in Massachusetts, he received a stiff response from the Supreme Court Justice from the Commonwealth, Oliver Wendell Holmes: "So far as I know," Holmes replied, "in the state courts at least, there has been too little rather than too much [Back Bay in appointments]. Men to whom all ideas and all books come easy rarely are found outside that class, so far as I know."[36]

Taft that year appointed another Harvard man, James Madison Morton, Jr., a provincial Brahmin from Fall River,

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34. *See generally* William G. Young, *Amy Warwick Encounters the Quaker City: The District of Massachusetts and the President's War Powers*, 74 Mass. L. Rev. 206 (1989).

35. *See* GORDON CARRUTH & EUGENE EHRLICH, AMERICAN QUOTATIONS 109, (1992 ed.), (*quoting* 1911 Holy Cross Alumni Dinner Toast):

> And this is good old Boston,
> The home of bean and the cod,
> Where the Lowells talk to the Cabots,
> And the Cabots talk only to God.

Carruth and Ehrlich cite several variations of the toast, all of which turn on the selective choice of interlocutors by Lowells or Cabots.

36. ALEXANDER M. BICKEL & BENNO C. SCHMIDT, 9 HISTORY OF THE SUPREME COURT OF THE UNITED STATES, THE JUDICIARY AND RESPONSIBLE GOVERNMENT 1910-1921, 71 (1984).

whose father then served on the Supreme Judicial Court,[37] to fill the vacancy created when he elevated Judge Dodge to the First Circuit.

Judge James Madison Morton, Jr.

But demographic changes and associated realignments in political power were stirring in the commonwealth, and the federal bench and the bar in Massachusetts were being nudged toward greater diversity. Although beyond the scope of this survey, the nomination and appointment of Louis D. Brandeis of Boston, the first Jewish lawyer to serve on the Supreme Court of the United States, was a major breach in the social exclusivity of the cadre of federal judges from Massachusetts. Significant elements of the Brahmin Massachusetts bar in a not so subtle anti-semitic campaign sought to block the senatorial confirmation of Brandeis.[38] They were unsuccessful and the precedent for federal judicial appointments from Massachusetts outside the Brahmin socio-economic class had been established.

The increasing pluralism of American society affected not merely federal judicial appointments but became the subject matter of federal litigation in the early years of the twentieth century. The effective campaign manager for Brandeis in the Senate confirmation battle had been George W. Anderson, who took his own law degree at Boston University and served as United States Attorney until appointed to the First Circuit by President Wilson. Sitting by designation in the District of Massachusetts, Judge Anderson blunted the reactionary response — embodied in the post-World War I "Red Scare" roundups of aliens — to the immigration of non-protestant nationalities and ethnic groups that swelled at the beginning of the twenti-

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37. Judge Morton was the first of two United States District Judges whose fathers served on the Massachusetts Supreme Judicial Court while their sons served as federal judges. The other, Joseph L. Tauro, was appointed a federal district judge in 1972, when his father was serving as Chief Justice of the Supreme Judicial Court.

It was not until 1967, with the appointment of Frank J. Murray, an Associate Justice of the Superior Court, however, that an appointee to the federal district court for Massachusetts had prior personal state court judicial experience. Since Judge Murray's appointment, such experience has been quite common. Seven of the nineteen persons appointed to the United States district court after Judge Murray served as Superior Court judges.

38. *See generally* A. TODD, JUSTICE ON TRIAL: THE CASE OF LOUIS D. BRANDEIS (1964).

eth century. In a stern opinion, Judge Anderson rebuked Attorney General A. Mitchell Palmer for the government's treatment of suspect aliens.[39] "[A] mob is mob," Judge Anderson observed, "whether made up of government officials acting under instructions from the Department of Justice, or of criminals, loafers, and the vicious classes."[40]

Judge James Arnold Lowell.

In 1922, the increase in the judicial business of the federal courts following World War I required an increase in the complement of federal district judges. For Massachusetts this meant that the single district judge, Judge Morton, was now joined by two colleagues: James Arnold Lowell, the fourth Lowell to serve on the court, and Elisha H. Brewster, the first federal judge from Springfield. The court was now poised for the explosive changes brought on by the New Deal years.

II. The Period of Transition

By the early years of the twentieth century, federal courts throughout the country had established for themselves a role in policing the economic reform initiatives of the state governments. At the same time, they were directed by Supreme Court precedent to develop a body of federal common law to govern those essentially local disputes they were called upon to resolve through the exercise of their diversity jurisdiction. In both these areas the federal courts had customarily presumed to displace other governmental institutions through the exercise of federal judicial power. By the middle of the century, however, the federal courts effectively abandoned the exercise of this power as evidenced in a series of Supreme Court decisions having their origins in opinions by Massachusetts federal judges.

A. *Withdrawing from Economic Supervision*

The role of the federal courts in policing government economic initiatives came under intense attack when the

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39. Colyer v. Skeffington, 265 F. 17 (D. Mass. 1920).

40. *Id.* at 43. *See generally,* GEORGE DARGO, 1 A HISTORY OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT: 1891-1960, 87-108 (1993).

New Deal sought new ways to deal with the nation's economic crisis. As the late Professor Paul Freund has noted, "two cases marking the perigee and apogee of the judicial revolution surrounding the New Deal were launched in the Massachusetts federal courts."[41] The transformation in the approach toward judicial review of such initiatives mirrored the transformation of the demographics of the federal bench in Massachusetts.

Judge Elisha H. Brewster.

The first major New Deal case to come before the District of Massachusetts was decided by Judge Brewster, one of the last of the Republican judges appointed to the court before the election of Franklin Roosevelt. At issue was the constitutionality of the tax scheme through which the Agricultural Administration Act encouraged production controls for basic agricultural products. Judge Brewster upheld the Act against the challenge[42] only to have divided panels of the First Circuit[43] and ultimately the Supreme Court[44] vote to strike it down.

The intervening success of the New Deal in the federal courts was demonstrated in the second major case involving economic regulation to come before the District of Massachusetts. The case involved a challenge to old age assistance taxes in the Social Security legislation. That challenge was rejected in the District Court by Judge George C. Sweeney, who became in 1935 the first Roosevelt appointee to the federal courts in Massachusetts.[45] Judge

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41. Paul A. Freund, *The Rise and Fall of Judicial Resistance to the New Deal: Benchmarks from the Federal Courts for Massachusetts*, 74 Mass.L.Rev. 234, 238 (1989).

42. Franklin Process Co. v. Hoosac Mills Corp., 8 F.Supp. 552 (D. Mass. 1934).

43. Butler v. United States, 78 F.2d 1 (1st Cir. 1935).

44. United States v. Butler, 297 U.S. 1 (1936).

45. Davis v. Edison Electric Illuminating Co. of Boston, 18 F.Supp. 1 (D. Mass. 1937). Including Judge Sweeney, the case involved the first three Roosevelt appointees to the United States District Court for the District of Massachusetts. United States Attorney Francis J. W. Ford, who would later become the second Roosevelt appointee to the District Court in 1938, intervened in the case on behalf of the government. Charles E. Wyzanski, Jr., of the Solicitor General's Office, who would become the third Roosevelt appointee to sit on the District Court bench in 1941, argued the government's position in the Supreme Court.

Judge George C. Sweeney.

Sweeney's opinion was ultimately vindicated, after reversal in the First Circuit,[46] by the Supreme Court.[47]

The turnabout in the Supreme Court's attitudes toward the review of economic regulation, foreshadowed in the decisions of the District Court for the District of Massachusetts during the New Deal, presaged an equally dramatic change in the social backgrounds of the judges who sat on the District Court bench. By 1941, when Arthur D. Healey, the fourth Roosevelt appointee to sit on the District Court bench, was confirmed, the United States District Court for the District of Massachusetts, which now consisted of four members, was no longer the Brahmin enclave Justice Holmes considered appropriate. As the country began World War II, the District Court consisted of one Jewish member and three Irish-Americans. Another Yankee would not sit on the bench until 1954, when Bailey Aldrich was appointed by President Eisenhower to fill the newly created fifth seat on the court.

B. *Deferring to State Substantive Law*

Although less dramatic in the public mind, another jurisprudential transformation of no less importance to the role of the federal courts than the fall of federal court resistance to economic legislation[48] also occurred in the Supreme Court during the 1930s. This was the decision to defer to state substantive law in diversity cases announced in *Erie Railroad Co. v. Tompkins*,[49] an opinion in which a modern Supreme Court Justice from Massachusetts, Louis D. Brandeis, overruled venerable precedent[50] that had been authored by the great Massachusetts Supreme Court Justice of the classical period, Joseph Story. *Erie*, which required the federal courts to apply state substantive law as

46. 89 F.2d 393 (1st Cir. 1937).

47. Helvering v. Davis, 301 U.S. 619 (1937).

48. It should be noted that the new-found hospitality of the Supreme Court to economic regulation brought a dramatic increase in the amount of federal question litigation for the federal courts generated by the burgeoning federal regulatory and taxation schemes.

49. 304 U.S. 64 (1938).

50. Swift v. Tyson, 41 U.S. (16 Pet.) 1 (1842).

a rule of decision in essentially the same way as would a state court sitting within the same judicial district, sought, *inter alia*, to eradicate the possibility that the rule of decision in a diversity case could be manipulated by the choice of a federal as opposed to a state forum.

Because the federal court applying state law functions under *Erie* as essentially a state court but without direct review by the Supreme Judicial Court, the *Erie* doctrine has given rise to questions about the continued vitality of diversity jurisdiction for the federal courts. Those more enamored of the dictates of logic than the lessons of experience have argued that the federal courts are charged with doing, duplicatively and without appropriate supervision, what the state courts already do. But those who have had to grapple with the practicalities of judicial administration recognize the continued value of federal diversity jurisdiction in a state like Massachusetts.

The fear of interstate antagonisms, which originally gave rise to diversity jurisdiction, no longer appears to have much force in contemporary America. But the disparity in supporting resources afforded state and federal trial judges argues for permitting a federal court diversity jurisdiction — limited by a relatively high amount-in-controversy requirement — to divert a number of the more complex state law cases to the federal courts and thereby avoid further burdens on an overburdened state court system. While federal judges also have a tendency to feel overburdened, the vast majority — if not all — of Massachusetts' federal trial judges have welcomed the opportunity to try diversity cases as a means of staying in touch with the core concerns of the trial bar of the commonwealth.

Recognizing the need for practical mechanisms to provide federal courts with guidance regarding unsettled questions of state law, the Supreme Judicial Court has provided a certification process by which federal judges may obtain the views of the commonwealth's highest court when they are called upon to resolve difficult problems of Massachusetts law.[51]

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51. *See generally,* Herbert P. Wilkins, *Certification of Questions of Law: The Massachusetts Experience,* 74 Mass. L. Rev. 256 (1989).

In short, although the exercise of diversity jurisdiction under *Erie* places the federal court in the posture of a ventriloquist's dummy, mouthing a law pronounced by others, the deference of the federal courts to state substantive law has provided a predictable and manageable alternative forum to alleviate strains on the state judicial system consistent with the evolving development of the commonwealth's jurisprudence by the Supreme Judicial Court.

III. The Period of Oversight

The activist qualities of the Warren Court in the 1950s and 1960s necessarily affected the direction of the United States District Court for the District of Massachusetts. As relevant here, those activist qualities added a more pronounced dimension of oversight of state action to the federal court's exercise of jurisdiction. In the criminal law, this oversight responsibility was manifest in federal court review of *habeas corpus* petitions by state prisoners and in the increased prosecution under federal criminal statutes of state and local officials for acts of political corruption. More fundamental was the increased tendency of the federal courts to exercise jurisdiction over state institutions which were found to have failed to meet federal constitutional or statutory standards.

A. *Post-Conviction Review of State Criminal Proceedings*

Opportunities for alleged constitutional error in state criminal proceedings to be litigated and remedied through collateral proceedings pursuant to federal court *habeas corpus* jurisdiction invite substantial tension between state and federal courts.[52] Perhaps the most sensitive institutional issue is posed by the fact that after a state defendant has been convicted in the state trial court, has had that conviction upheld by the intermediate state appellate court and then had that conviction left undisturbed by the state's

52. For a statement of concern made early in this period by a highly respected federal judge about the breadth of this jurisdiction, *see* Henry J. Friendly, *Is Innocence Irrelevant? Collateral Attack on Criminal Judgments*, 38 U. Chi. L. Rev. 142 (1970). For a current statement of concern that this jurisdiction is being unduly restricted, *see The Supreme Court, 1992 Term - Leading Cases*, 107 Harv. L. Rev. 144, 273-93 (1993).

highest court, it is still within the power of a single federal district judge to vacate the conviction.

The exercise of state *habeas corpus* jurisdiction by the Massachusetts federal courts has been relatively restrained and process oriented, no doubt in good measure due to the generally high quality and progressive direction of the Massachusetts state courts in criminal matters. Professor Shapiro, in a survey of this jurisdiction using the District of Massachusetts during the early 1970s as his control sample[53], concluded that "federal judges tend to agree with the findings and conclusions of their state court brethren," but that "[t]he percentage of *habeas corpus* cases in which the petitioner achieves some measure of success is slightly higher then is generally suggested, especially if those cases in which derailed state processes have been put back on the track are included."[54]

The existence of parallel avenues for direct and collateral attack on criminal convictions in the federal court has served to emphasize differences between state criminal trial procedure and that in the federal district court. Perhaps the most graphic example is found in the way the two systems instruct regarding *reasonable doubt.* In the state system, Chief Justice Lemuel Shaw's charge on reasonable doubt in *Commonwealth v. Webster*[55] with its demand for proof to "a moral certainty"[56] has been described as the "linchpin of Massachusetts criminal jurisprudence."[57] But any "talismanic" quality for the *Webster* charge and its moral certainty formulation has been emphatically rejected by the Massachusetts federal courts where such instructions have been subjected to "long standing, continuing and current" criticism.[58] Nevertheless, the federal courts have declined to transform their criticism into a *per se* grounds for vacating state proceedings. The standard for

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53. David L. Shapiro, *Federal Habeas Corpus: A Study in Massachusetts,* 87 Harv. L. Rev. 321 (1973).

54. *Id.* at 368.

55. 59 Mass. (5 Cush.) 295 (1850).

56. *Id.* at 320.

57. Frank R. Hermann, S.J. & Brownlow M. Speer, *To a Moral Certainty: The Historical Context of the* Webster *Charge on Reasonable Doubt,* 36 Boston B.J. No. 2 (Mar./Apr. 1992) 22.

58. Smith v. Butler, 696 F.Supp. 748, 753-55 (D. Mass. 1988), *aff'd,* 879 F.2d 853 (1st Cir.), *cert. denied,* 110 S. Ct. 245 (1989).

review of questionable instructions when the First Circuit is "sitting on direct review in a *federal* criminal case . . . is quite different [and more demanding than that used] in reviewing a *state* proceeding pursuant to [federal court] habeas jurisdiction."[59]

Even given the Supreme Court's direction that "the burden of justifying federal habeas relief is 'greater than the showing required to establish plain error on direct appeal,'"[60] however, federal courts in Massachusetts continue to exercise their *habeas corpus* jurisdiction over state criminal cases vigilantly, from time to time vacating state judgments which have been affirmed through the state system.[61]

B. *Federal Prosecutions of State Political Corruption*

The federal district court in Massachusetts was not a stranger to prosecutions of state political figures for acts of interference with federal government functions before the 1960s. James Michael Curley's first federal felony conviction, for example, arising out of his decision to take the federal civil service qualifying examination for a political supporter initially brought a two-month sentence from Judge Francis Cabot Lowell in 1903.

Judge Francis Cabot Lowell.

While his appeal was pending during the 1903 aldermanic election, Curley made political capital out of the conviction by claiming that he "did it for a friend." This led Judge Lowell to observe, when Curley and his codefendant appeared before him for execution of the sentence after the conviction was affirmed in 1904,[62] that "[o]n account of the effrontery of their conduct since the election, if I saw any legal way to sentence them to the maximum penalty for this offense, I should certainly overrule my former sentence in this case."[63]

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59. Rogers v. Carver, 833 F.2d 379, 381 (1st Cir. 1987), *cert. denied*, 485 U.S. 937 (1988).

60. Engle v. Isaac, 456 U.S. 107, 134-35 (1982) (citations omitted).

61. *See, e.g.*, Oses v. Commonwealth, 775 F.Supp. 443 (D. Mass. 1991), *aff'd*, 961 F.2d 985 (1st Cir.), *cert. denied*, 113 S. Ct. 410 (1992); Lanigan v. Maloney, 853 F.2d 40 (1st Cir. 1988), *cert. denied*, 488 U.S. 1007 (1989); Nelson v. Callahan, 721 F.2d 397 (1st Cir. 1983).

62. United States v. Curley, 130 F. 1 (1st Cir.), *cert. denied*, 195 U.S. 628 (1904).

63. JACK BEATTY, THE RASCAL KING: THE LIFE AND TIMES OF JAMES MICHAEL CURLEY (1874-1958) 89, *see generally* 77-82, 87-91 (1992).

Federal concern with specifically state political corruption, however, did not come into its own until Judge Wyzanski's judicial inquiry into bribery and extortion in the Commonwealth's Department of Public Works and the Massachusetts Turnpike Authority in *United States v. Worcester*.[64] Using the power of the court to impose conditions of probation on convicted criminal defendants, Judge Wyzanski required Worcester, an engineering contractor who had been convicted of tax evasion for claiming as deductions monies paid to secure contracts with various public bodies, to "give full, candid testimony to any national, state or local prosecutor, grand jury, petit jury, legislative body, legislative committee, or authorized public agency of inquiry concerning any matter directly or indirectly relevant to those matters covered in the trial of this indictment."[65] When United States Attorney Elliot Richardson complained that Worcester had failed to comply with this condition, Judge Wyzanski conducted a wide ranging probation revocation proceeding. He concluded that Worcester was not in violation after finding credible Worcester's testimony regarding payments made to "former members of the state legislature, a former candidate for the Republican nomination as Governor, and a present member of Congress" and regarding certain of his cash that had been delivered to William F. Callahan, sometime chairman of the Department of Public Works and the Turnpike Authority, by placing the money in Callahan's overcoat hanging in the hallway of a home where both Worcester and Callahan were visiting.[66]

At the conclusion of a very scholarly but highly personal opinion, Judge Wyzanski observed that some might argue the underlying questions raised by his inquiry

> are no business of a judge. He is not to be a common scold. Nor is he to use his place to push before the public his name, his views, his personality . . . But even if one is to be charged with vanity, with absence of taste,

64. 190 F. Supp. 548 (D. Mass. 1960).
65. *Id.* at 553.
66. *Id.* at 572.

> with lack of grace, with lust for higher office, is it not time to sound a clarion? Another will blow it better. But it is worth something to prove that the trumpet can be blown. And it is more important, far more important, to give to the Grand Jury, to the District Attorney, and to those vested with broad investigatory powers the sense of public support.[67]

The clarion call Judge Wyzanski sounded prompted other efforts to address the problem in the commonwealth. One such effort was the state Crime Commission which conducted investigations and prosecutions of political corruption throughout the 1960s. Among those involved in that undertaking was Walter Jay Skinner, then an Assistant Attorney General in charge of the Criminal Division of the state Attorney General's office. When nominated by the Governor for a seat on the state Superior Court bench, Skinner encountered opposition from Executive Councilors unhappy with the Crime Commission's activities. Skinner's later appointment as a United States District Judge was the first in a series of federal court appointments for former prosecutors, including those of United States Magistrate Robert DeGiacomo and United States District Judge Edward F. Harrington, whose vigorous pursuit of state political corruption created enemies who had earlier successfully blocked anticipated state judicial appointments for them.

In the 1970s the United States Attorney's Office began to bring substantial resources to bear on the prosecution of political corruption in the United States District Court for the District of Massachusetts. Unconstrained by political and funding realities that dampen the enthusiasm of some state prosecutors for such prosecutions, and supported by sophisticated federal law enforcement agents armed with investigative tools not available to state personnel, the United States Attorney's Office secured convictions of state

67. *Id.* at 575.

legislators,[68] local officials,[69] and even local and state police officials.[70] The expansive jurisdiction given under federal law for the prosecution of state political corruption has thrust the modern Massachusetts federal district court directly and increasingly into an evaluation of individual malfeasance in the commonwealth's state and local offices.

C. *Policing State Institutions*

Apart from the increased opportunities to evaluate individual wrongdoing in state offices, the 1970s brought the federal district court judges in Massachusetts — like their counterparts in other federal district courts[71] — quasi-managerial responsibilities for the supervision of a wide range of state institutions.

These responsibilities go beyond insuring that state initiatives do not interfere with federal law;[72] they have involved affirmative undertakings to encourage state and local institutions to meet their obligations under federal statutory and constitutional mandates. Invoking a variety of federal statutory remedies for misfeasance or nonfeasance by state and local institutions, plaintiffs in cases involving discrimination in public schools and public employment, the rights of prisoners, the rights of the mentally disabled, voting rights and environmental degradation have sought relief in the United States District Court for the District of Massachusetts during the past quarter century.

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68. *See, e.g.*, United States v. Kelly, 722 F.2d 873 (1st Cir. 1983) (Chairman of Massachusetts Senate Ways and Means Committee), *cert. denied*, 465 U.S. 1070 (1984); United States v. DiCarlo, 565 F.2d 802 (1st Cir. 1977) (Massachusetts Senate majority leader), *cert. denied*, 435 U.S. 924 (1978).

69. *See, e.g.*, United States v. Silvano, 812 F.2d 754 (1st Cir. 1987) (Boston Budget Director); United States v. Arruda, 715 F.2d 671 (1st Cir. 1983) (Fall River Housing Authority Director); United States v. Hathaway, 534 F.2d 386 (1st Cir.) (New Bedford Redevelopment Authority Executive Director), *cert. denied*, 429 U.S. 819 (1976).

70. United States v. Butt, 955 F.2d 77 (1st Cir. 1992) (Malden police officers paid off by prostitutes); United States v. Boylan, 898 F.2d 230 (1st Cir.) (Boston police officers paid off by nightclub and bar owners), *cert. denied*, 498 U.S. 849 (1990); United States v. Drougas, 748 F.2d 8 (1st Cir. 1984) (ranking state police officer participating in drug smuggling conspiracy).

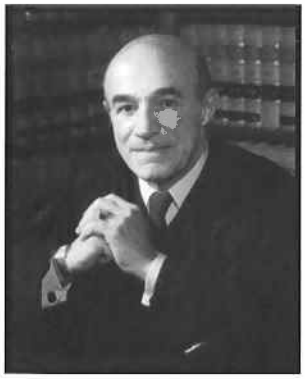
71. *See generally*, PHILLIP J. COOPER, HARD JUDICIAL CHOICES: FEDERAL DISTRICT COURT JUDGES AND STATE AND LOCAL OFFICIALS (1987); Abram Chayes, *The Role of the Judge in Public Law Litigation*, 89 Harv. L. Rev. 1281 (1976).

72. *See, e.g.*, Securities Industry Association v. Connolly, 703 F.Supp. 146 (D. Mass. 1988) (Massachusetts Blue Sky regulations preempted by Federal Arbitration Act), *aff'd*, 883 F.2d 1114 (1st Cir. 1989), *cert. denied*, 495 U.S. 956 (1990); King v. Collagen Corp., 983 F.2d 1130 (1st Cir.) (Massachusetts common law of products liability preempted by federal Food and Drug Administration regulations), *cert. denied*, 114 S. Ct. 84 (1993).

Such litigation has drawn the federal court into supervision of various institutions of state government from the Boston public schools to the Massachusetts Water Resources Authority.[73] What engages the federal court has been a showing of systematic default in the conduct of the subject agency and an institutional unwillingness or inability to correct the pertinent shortcomings. Indeed, at times the local political institutions have found it convenient to use the federal court as a way to avoid confronting directly themselves difficult issues and unpopular choices.

The goal of the federal courts in this area has been to fashion a manageable remedy which will put the appropriate resolution of the issues back in the hands of revitalized state and local institutions that have been redirected to address the problems without ongoing judicial supervision.

Judge Joseph L. Tauro.



These principles were recently illustrated by the disengagement of the federal court from oversight of the state agencies charged with care and education of mentally handicapped citizens. The reason for the court's initial involvement was made pointedly by Judge Joseph L. Tauro in an opinion issued mid-way through the twenty-one year course of institutional litigation regarding the mentally disabled: "The retarded have no potent political constituency. They must rely on the good will of those of us more fortunate than they, and the constitution which contains the manner in which all of us must meet our varied responsibilities."[74]

After over two decades and "literally thousands of hours . . . devoted to fashioning a comprehensive remedial program," Judge Tauro last year entered an order closing the federal court supervision of the state institutions for the retarded. As he noted in his Memorandum regarding disengagement, the "key factor" in the decision to disengage was the Commonwealth's "commitment to make permanent the historic improvements that have been

73. *See generally,* Sandra L. Lynch, *Public Institution Litigation in the First Circuit,* 74 Mass. L. Rev. 259 (1989).

74. Ricci v. Okin, 537 F. Supp. 817, 836 (D. Mass. 1982).

achieved during the past twenty years" as manifested, *inter alia*, by an Executive Order creating the Governor's Commission on Mental Retardation.[75]

D. *Reflecting Diversity*

The federal judges called upon to exercise oversight regarding state and local proceedings, officers and institutions during the latter part of the twentieth century have come from increasingly diverse segments of the community. As the nation turned in 1960 for leadership to its first Catholic president, the appointees to the federal district court in Massachusetts also began to be drawn from ethnic backgrounds previously unrepresented on that bench. Anthony Julian, appointed by President Eisenhower in 1959, became the first Italian-American to sit as a federal judge in Massachusetts. And by 1978, when four new judgeships were created, two Italian-Americans, Judges Tauro and A. David Mazzone, sat as active federal district court judges on the ten-member court. Among the appointees to the new judgeships were the court's first African-American, David S. Nelson, and its first woman, Rya W. Zobel. The five appointees taking their oaths in 1994 to what has now become a thirteen-member court include the second and third women members, Patti B. Saris and Nancy Gertner, and the second African-American, Reginald Lindsay. The members of the court,[76] once drawn only from white males of the Brahmin caste, have begun to reflect more accurately the diverse backgrounds of the members of the bar from which its judges are drawn and of the citizens of the commonwealth, whom it serves.

IV. Conclusion

Despite dramatic changes over the past two centuries, the role of the federal court in Massachusetts has remained essentially the same. It has attended to resolving the disputes which arise in the conduct of national and interna-

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75. Ricci v. Okin, 823 F. Supp. 984, 985 (D. Mass. 1993).

76. The geometric increase in the number of federal judges during the twentieth century is evident in the time chart of the judges on page 104. From a single judge court for nearly a century and one-half until 1922, the United States District Court for the

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

	Year Appointed	Appointing President
1. LOWELL, John	1789	Washington
2. DAVIS, John	1801	J. Adams
3. SPRAGUE, Peleg	1841	Tyler
4. LOWELL, John	1865	Lincoln
5. NELSON, Thomas Leverett	1879	Hayes
6. LOWELL, Francis Cabot	1898	McKinley
7. DODGE, Frederic	1905	T. Roosevelt
8. MORTON, James M., Jr.	1912	Taft
9. LOWELL, James Arnold	1922	Harding
10. BREWSTER, Elisha H.	1922	Harding
11. McLELLAN, Hugh D.	1932	Hoover
12. SWEENEY, George C.	1935	F. Roosevelt
13. FORD, Francis J. W.	1938	F. Roosevelt
14. HEALEY, Arthur D.	1941	F. Roosevelt
15. WYZANSKI, Charles E., Jr.	1941	F. Roosevelt
16. McCARTHY, William T.	1949	Truman
17. ALDRICH, Bailey	1954	Eisenhower
18. JULIAN, Anthony	1959	Eisenhower
19. CAFFREY, Andrew A.	1960 1961	Eisenhower/ Kennedy
20. GARRITY, W. Arthur, Jr.	1966	Johnson
21. MURRAY, Frank J.	1967	Johnson
22. CAMPBELL, Levin H.	1971	Nixon
23. FREEDMAN, Frank H.	1972	Nixon
24. TAURO, Joseph L.	1972	Nixon
25. SKINNER, Walter Jay	1973	Nixon
26. MAZZONE, A. David	1978	Carter
27. KEETON, Robert E.	1979	Carter
28. McNAUGHT, John J.	1979	Carter
29. ZOBEL, Rya W.	1979	Carter
30. NELSON, David S.	1979	Carter
31. YOUNG, William G.	1985	Reagan
32. WOLF, Mark L.	1985	Reagan
33. WOODLOCK, Douglas P.	1986	Reagan
34. HARRINGTON, Edward F.	1988	Reagan
35. GORTON, Nathaniel M.	1992	Bush
36. STEARNS, Richard G.	1993	Clinton
37. LINDSAY, Reginald C.	1993	Clinton
38. SARIS, Patti B.	1993	Clinton
39. GERTNER, Nancy	1994	Clinton
40. PONSOR, Michael A.	1994	Clinton

tional commerce; it has applied federal policies to local controversies; and — while it has become deferential to the policy choices made in economic matters by representative institutions and in non-federal cases to the substantive law of the appropriate state jurisdiction — it has nevertheless remained independent as a guardian of civil rights and liberties guaranteed by federal law. In short, the federal court has remained firmly established in its anomalous role in the Massachusetts judicial system as both a part of and apart from the collection of political institutions in the commonwealth, both reflecting and reflecting upon the community in which it sits. 

District of Massachusetts has increased to a complement of 13 judges only 72 years later. As a consequence, it should not be surprising that exactly half of the forty judges who have sat on the court in the over two centuries of its history are still alive today.

JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS
1789 - 1994