

**An Informal History
Of The Western District
Of New York**

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I am pleased and honored to be with you this afternoon to continue the informal presentation of the history of the districts in the Second Circuit. In a way, it is appropriate that the presentation for the Western District be last, since ours was the last district to be formed in the circuit. As you are all well aware, the Southern District is often referred to as the "Mother Court." With that in mind, the Western District is certainly the "junior." Ours is literally a 20th Century court. Formed in 1900 when it was split off from the Northern District, the Western District now contains 17 counties, with a population of about 2,500,000. Nestled in the westerly corner of the State, the Western District is bound by Lakes Erie and Ontario to the north and west, and the State of Pennsylvania to the south.

Booming industrial and commercial growth in the late 1890s foreshadowed the district's creation. Between 1890 and 1900, about 400 new factories were built within the City of Buffalo alone. As a halfway point between New York and Chicago, Buffalo was the center for barge, rail-lake traffic in grain, ore, and livestock. At the same time, George Eastman was busy in Rochester converting the miracle of photograph to a worldwide phenomenon. This thriving commercial activity made for substantial litigation.¹

Although tied geographically, politically, and economically to other Second Circuit districts, the Western District is unique in many respects. It is a link between the East and Mid-West and between the United States and Canada. Cleveland is only a few hours away. Toronto and the population and financial center of Canada is within a short reach of the bridges over the Niagara River.

Great natural beauty abides within a few miles of heavy industry, machine shops, and chemical plants. Niagara Falls, Lakes Erie and Ontario, the Gorge of the Genesee River, Letchworth Park, the Finger Lakes, and the rugged terrain of the Southern Tier lie within its borders. Vineyards and orchards line the lakes. Rolling, fertile farmland lie to the south in its rural counties.

Finally, in the foothills of the Appalachian chain is the Seneca Indian Reservation and Chautauqua Lake. It should be noted that the Chautauqua Institute, which has provided a unique blend of cultural, educational, and recreational offerings for many years, is still thriving.

This district of contrasts makes for a calendar which is as varied and plentiful as our lake-effect winter storms, which bring annual snowfall of over 100 inches. This overabundance of snow is balanced by sunny, warm summers and glorious fall days. I believe there is no better subject to highlight the unpredictability and variety of our calendar than to refer to a case brought on by the weather.

Let us return to the early winter of 1959, which had been a heavy one with much snow and ice. After dumping snow on the city for weeks, the weather changed suddenly in the third week of January. Heavy rain storms and thaw set in. On the evening of January 21st, the sudden thaw began to melt the ice on the lake and the Buffalo River, which winds through the port area of Buffalo. The river is lined with docks, old grain elevators and factories, eventually emptying into Lake Erie. Unfortunately, that night moorings of some of the grain boats was not as snug as they should have been.

The S.S. MacGilvray Shiras, owned by Kinsman Transit, was not able to withstand the press of ice and debris, and at about 10:40 that evening broke loose. It smashed into the S.S. Michael K. Tewksbury, sending both vessels downstream. Not expecting any traffic, the operators of the Michigan Avenue lift bridge had taken a tavern break on that nasty winter evening. Frantic phone calls to warn them went unheeded until the very last moment. The bridge was just being raised when the Shiras and the Tewksbury crashed into its center at about 11:17. In the course of their downstream journey, several other vessels were damaged. The pile-up at the bridge caused the ice and debris to back up several miles along the course of the river, causing extensive damage to much waterfront property and disrupting transportation on the river for about two months. Assessing liability and damage became the subject of drawn out and difficult litigation before Judge Harold P. Burke. He found that while most of the damage may have been unexpected, it was not unforeseeable. His decision was affirmed and modified by the Court of Appeals.² Judge Friendly's appellate opinion in that case has since become the standard text in many law schools on the problem of foreseeability.

Continuing with the theme of the Kinsman case, let us now continue upstream to the head waters to the

beginning of our journey in the Western District. Our first judge was John R. Hazel, who was appointed on June 8, 1900, soon after the district was formed. At that time, the judge's salary was about \$5,000 and he had a staff of three: a court clerk, a deputy, and a stenographer. His career was different, certainly, from the judges who have followed, but in some ways there are many similarities.

Born in 1860, Hazel began his legal career in the office of the Assistant City Attorney in Buffalo, where he prepared for the bar examination. He was admitted to the bar in 1882. Like others who were to follow him, he became very active in local politics, supporting James G. Blaine against the favorite son in Buffalo, Grover Cleveland, in 1884. At 28, he was Secretary to the County Republican party and became a close supporter of Teddy Roosevelt, who credits Judge Hazel in his autobiography as being one of the principle reasons for his nomination for governor in 1896. Less than one year after Judge Hazel took office, he had the unfortunate duty of swearing in Vice President Theodore Roosevelt, after President McKinley was assassinated while visiting Buffalo at the time of the Pan American Exhibition in 1901.

Judge Hazel's work on the bench reflected the changes that were taking place in Western New York and in the American society as a whole. He became an expert in patent law and decided cases involving automobiles, airplanes, the Kodak film-making process, as well as musical instruments. His many decisions in patent cases exercised considerable influence in that field.

In 1910, a dispute arose as to whether the "new" musical machines, such as the phonograph and the player piano and the records which accompanied them, should be subject to royalty payments to music publishers. He decided that the copyright law was not broad enough to cover these new devices, and he was sustained on appeal. Judge Hazel ruled on patents which covered the validity of certain inventions of the Wright brothers, as well as those of Harry Sheldon, which related to the business of the Ford Motor Company.

Long and difficult decisions were not foreign to him. Without the aid of a word processor, he wrote an 83-page decision in a suit involving the manufacture of a new axle shaft. Commentators have since noted that his opinion was a veritable treatise on the history of metallurgy and patent law.

Eastman Kodak and George Eastman fared well with their early patents in Judge Hazel's court. However,

Eastman did not have everything his own way. On one occasion, Judge Hazel ruled that a patent held by a New Jersey Methodist minister was infringed by an Eastman device. In another case, he held that Kodak had a monopoly and ordered it to dispose of several of its patents. In the days of the trust-busters, it is interesting to note that Judge Hazel presided over one of the first trials in which Standard Oil was convicted for an anti-trust violation.

His career continued through World War I, when espionage cases and violations of the Profiteering Act appeared on his calendar. The Twenties brought a heavy influx of smuggling violations to our border community. Although generally lenient to first offenders, Judge Hazel was particularly severe to violators who hired young boys to run prohibited liquor loads across the Niagara River.

To dispose of the burgeoning prohibition calendar, Judge Hazel resorted to "Bargain Days." At the beginning of the session, he would announce that all who pled guilty on that day would be fined a certain amount. Critics of plea bargaining may deplore this arrangement, but court management proponents should note, however, that through this device, he and his associate, Judge Adler, established a national record for dispositions in 1931.³

It is also interesting that, during the same part of the 1920s, "Wild Bill" Donovan, later of O.S.S. fame (forerunner of the C.I.A.), served as United States Attorney. Donovan, born on Buffalo's Irish waterfront, became a lawyer and war hero. He had risen quickly in old Buffalo society, gaining membership in the elite Saturn Club. When he became U.S. Attorney, it was a time when prohibition enforcement was going strong. The general sentiment in the Saturn Club, however, was that the law applied to the poor and working class, but not to its own members. Donovan did not share that view. His notice that he intended to impose the law evenly was disregarded by Saturn Club members, who did not believe that Donovan meant what he said. But he did. Donovan ordered the club raided. Though no charges were brought against individuals, the club was fined, and in many established Buffalo households, the Donovans were dropped from invitation lists--to put it mildly.

But Donovan's career continued unscathed. Shortly thereafter the Teapot Dome scandal erupted in Washington and Harlan Fiske Stone, the newly appointed Attorney General, asked Donovan to accept the post of Assistant Attorney General to help clean up the Department of Justice, which had been one of the centers of corruption.⁴

Back in Buffalo, Judge Hazel continued to handle the business of the court. In 1929, he passed upon the application of the immigration laws to aliens living in nearby Canada. The Jay Treaty of 1794 colorfully stated that "while the grass grows green and water runs downhill," British nationals may cross and recross the United States - Canadian border. Agreeing with the Immigration Service that this interpretation would destroy the fabric of the law, he held that the treaty had been abrogated in part by the War of 1812 and that only Canadian citizens could cross freely. His decision was reversed by the Court of Appeals but upheld by the Supreme Court.⁵

After serving 31 years, Judge Hazel retired on March 1, 1931, to practice patent law. He was active in converting the Wilcox Mansion, in Buffalo, New York--where he had administered the oath of office to President Roosevelt--into a national landmark. He died on October 15, 1951, at the age of 91.

A second judgeship was created in 1927, and Simon L. Adler of Rochester was selected for the post. A Harvard Law graduate of 1892, he practiced in Rochester briefly and then went to New York City. Eventually, he fled Gotham on the Hudson to return to the sylvan beauties of Rochester.

Judge Adler's early career was somewhat similar to that of Judge Hazel. But unlike Judge Hazel, he was successful in his campaign for public office. In 1910, he became a State Assemblyman. He must have been a man of stern physical constitution, good judgment, and moral character, for he survived in Albany for 16 consecutive terms. Adler became majority leader in 1916. During his tenure, he supervised an extensive revision of the banking laws and also headed a legislative commission investigating New York City corruption.

Most notably, Judge Adler was not afraid to take an unpopular stance. In 1919 and 1920, the national political scene was rocked by a red scare that led to the deportation of many immigrants because of their alleged connection with the Communist party. During the same period, five members of the New York City assembly delegation were elected on the Socialist ticket. Many of the assembly members supported a movement to oust them and prevent them from performing their elected duties. Judge Adler used his influence to prevent the ouster of the Socialist assemblyman and assure that they were able to perform their duties for the length of their respective terms of office.

Judge Adler's time of the bench was relatively short. He died on May 23, 1934. His judicial career was

noted for hard work and tenacity, particularly in dealing with the enormous number of prohibition cases. He is also noted for establishing the first federal Probation and Parole Office in the Western New York district.⁶

Judge John Knight was appointed to succeed Judge Hazel in 1931. Graduating from law school in 1896, (he had already embarked on a political career, having served as Town Clerk of Arcade since 1892), he became a Bankruptcy Referee, a District Attorney of Wyoming County, and in 1912, a State Assemblyman. He went to the State Senate in 1916. As a leader in the Senate, Judge Knight created a commission to investigate the feasibility of developing the water power resources of the St. Lawrence River and a program for rural taxation relief. He acted as chairman to a special commission that investigated and recommended a series of bills which revised the State's public service commission laws.

While on the federal bench, Judge Knight made headlines throughout the country in 1952 when he denied an application by the Italian government to extradite Carl G. LoDolce of Rochester. Mr. LoDolce, a former O.S.S. sergeant, who was charged with the murder of Major William V. Hollihan while they both were on a secret mission behind German lines in Northern Italy during World War II. Judge Knight ruled that during a time of war, the United

States Army has exclusive jurisdiction over its own soldiers in occupied territory. The Army lost jurisdiction when it gave LoDolce an honorable discharge. Under these circumstances he decided that the Italian court could not compel extradition for LoDolce to stand trial.

Judge Knight's courage was also reflected in other rulings. On December 12, 1952, he issued an 80-day injunction under the Taft Hartley Act, ordering 1,500 strikers back to work in the American Locomotive Company Plant in Dunkirk. They had walked out three months earlier, tying up production on nickel plate needed by the Atomic Energy Commission for the production of weapons. The Judge held that the strike was, in effect, a strike against the government and, as such, illegal.

The strikers returned to their jobs, and contract negotiations resumed. The C.I.O. bypassed the Circuit Court of Appeals and challenged Judge Knight's ruling directly in the United States Supreme Court. However, the plaintiffs withdrew their appeal upon reaching a new contract, thus eliminating the strike threat.

Judge Knight's capacity for detail served him well during his time on the bench. He was often called upon to adjudicate some of the ramifications of early New

Deal federal laws. Typical was that which involved priority for payment of federal social security taxes and State unemployment taxes from the estate of a bankrupt citizen. The formula he developed to deal with this problem was upheld by the United States Supreme Court.

Judge Knight loved the country. Throughout his career he conducted a term in the city of Jamestown, which is located at the easterly end of Lake Chautauqua. At the conclusion of each daily session, most of the lawyers and court personnel would travel to the Lenhart Hotel, located about ten miles away at the midpoint in the lake at the Stowe Ferry landing. The Lenhart was a solid wooden structure with a long porch and traditional rocking chairs. These surroundings helped give the Judge and others special insight into the problems before the court. Mosquito control was provided by large bird houses set at the ferry landing. Although a modern bridge now provides speedy crossing of the lake at that point, the hotel and ferry landing still remain, but alas the Jamestown term has been pretermited by an unduly efficient chief judge whose identity shall remain unstated.

Judge Knight did not follow Judge Hazel's lead and retire at age 70. Becoming a judge at age 60, he continued to serve until he died at age 84 in 1955.

Throughout his judicial life he was a dauntless commuter. He drove almost daily from his home in Arcade, about 40 miles from the courthouse over bumpy country roads, during years when most people would look upon such a journey as a major expedition.⁷

In August of 1955, President Eisenhower appointed Justin C. Morgan to succeed the late John Knight. Judge Morgan had a long history of public service before ascending to the federal bench. After a three-year stint in private practice, he became an Assistant United States Attorney, a position in which he served for almost seven years, until 1934. Like his predecessors, Morgan had been politically active, serving as Town Councilman and member of the Assembly from 1940 to 1955 when he accepted the judicial appointment.

Judge Morgan's time on the bench would prove to be unfortunately brief. Illness forced him to leave the courtroom in August of 1958. He continued to serve, however, working on cases in the hospital until his death on May 24, 1959. In January of that same year in fact, he issued decisions in condemnation cases from his bed at Roswell Park Memorial Institute.⁸

Both Knight and Morgan served in Buffalo. In Rochester, after Judge Adler's death, President Roosevelt appointed Harlan W. Rippey to succeed him in 1934.

Although Judge Rippey had a distinguished career, he served in the Western District for only two years before leaving the federal bench to become an Associate Judge of the New York State Court of Appeals. He remained there until 1944, when he retired at age 70.⁹

When Judge Rippey went to the Court of Appeals, he was succeeded by Judge Harold P. Burke. After graduating from the University of Notre Dame with a Law Degree in 1916, he served in France during the First World War. Eventually, he went to Albany as a Deputy Attorney General for the State and later became Corporation Counsel for the city of Rochester. Judge Burke left the state arena when he was appointed by President Roosevelt to serve as district judge in 1937.

Judge Burke was a study in contrast. Off the bench, he was cordial, charming, an avid fisherman and raconteur. On the bench, his style was terse, blunt, and to the point. If lawyers had prepared their cases well, they got on famously with him. But, if an attorney appeared in his court unprepared, the welcome was either frosty or blistering, depending upon the judge's attitude on that particular day. There were no favorites. Lawyers from large firms or the government were treated the same as anyone else.

Jury trials were his stock in trade. His courtroom hours were long, and if he believed that a lawyer needed additional time with a witness, he would simply skip the lunch hour and proceed right into the afternoon session. His charges were models of clarity and conciseness. There was hardly an attorney, including the present writer, who did not feel his wrath from time to time, but upon reflection, the victim would usually conclude that the Judge was in the right.

In spite of his crusty courtroom manner, Judge Burke believed deeply in the value of probation, and few sentences of his may be considered lengthy.

During the late 1940s and through the 1950s, the burden on Judge Burke was an extremely heavy one. In 1940, during Judge Knight's declining years, Judge Burke traveled to Buffalo often and handled many civil and criminal cases on the Buffalo calendar. Even after Judge Knight's death in 1951, this extra burden continued because of the serious illness of Judge Morgan during the middle 1950s. For all practical purposes, for many years Judge Burke handled the entire calendar in our district. It was a very difficult and trying time. Only with the appointment of Judge Henderson in 1959, did the need for Judge Burke to journey to Buffalo diminish.

Judge Burke was unique in other respects as well. For most of his career on the bench, he eschewed the services of a law clerk. He said, "All they did was give me more briefs. I have enough of them as it is." As a result, his written opinions were brief and seldom reported. When asked about reversals by the Court of Appeals, Burke replied, "I never feel badly about it, I always feel that is what we have the Court of Appeals for."¹⁰

Throughout his career, Judge Burke presided at the trial of many difficult criminal and civil cases, such as the Kinsman ship collision case, which has already been mentioned. In one notable criminal case, the defendant, a long-time member of the Communist Party, was convicted for violation of the Smith Act after a jury trial. As you may recall, the Smith Act outlawed membership in organizations advocating the overthrow of the government by force or violence. The Second Circuit affirmed, finding "a clear and present danger" of violent overthrow of the government, but in 1961, Noto's conviction was overturned by the Supreme Court, which held that there was insufficient evidence to convict.¹¹ To paraphrase Judge Burke, that is what we have the Supreme Court for.

Although, as I have pointed out, Judge Burke often had a chilly demeanor on the bench, he was practical and very attentive to the rights of individuals who appeared before him. I recall one trial in which the defendants styled themselves as the "Flower City" conspiracy. This case arose in the early 1970s when a group protesting the Vietnam War broke into the Selective Service Offices in Rochester and were caught strewing the records about. Some of the defendants decided to proceed pro se. Every morning they would bring in fresh flowers and place them on counsel's table, on the clerk's bench, and occasionally on the Judge's bench before he appeared. He was addressed by the group as Mister, instead of Judge or "Your Honor." Burke appeared not to notice the flowers nor the informal address by the litigants. The trial, which could have erupted into protest and demonstrations, proceeded smoothly to the ultimate conclusion of conviction. The Judge's sentence, as usual, was fairly mild, and he proceeded briskly to other business.

In his off hours, he was an avid fisherman. One of his fishing companions described the Judge as "the kind of fisherman who will cut the barbs off the end of the hook to make it sportier." Judge Burke had the distinction of being one of the longest active judges in the country, serving almost 44 years, from June 28, 1937

until June 15, 1981, when he retired. He died one month later on July 17, 1981.¹²

As I have already indicated, Judge Burke's responsibility for covering both Rochester and Buffalo during the 1950's was relieved with the appointment of Judge John O. Henderson in 1959. He was sworn in on October 2, 1959, about four months after the post became vacant. The appointment process moved at a much faster pace in those days. Before coming to the bench, he had served six years as U.S. Attorney.

Lawyers who practiced before Judge Henderson recall him as a man of great stature, both professionally and physically. At 6'4" and 260 pounds, he loomed over courtroom proceedings, his booming voice intimidating the uninitiated. One lawyer recalled that Judge Henderson seemed to span the distance between the doorway of his chambers and bench in just three steps.

Judge Henderson prided himself on being able to reduce complicated issues to simple truths. When a lawyer at a suppression hearing sought to introduce a Cheektowaga town ordinance regarding a railroad detective's curbside inspection of his client's garbage, Judge Henderson remarked, "What does the ordinance say: 'Thou shalt not pick garbage or nits?'"

Judge Henderson presided over many important and dramatic cases. He sat on the three-judge panel which ruled that Senator Robert Kennedy's appointed successor could fill the two and one-half years remaining of his term and that the office did not have to be placed on the ballot sooner. He also handled important cases involving race discrimination in employment at Bethlehem Steel and many cases arising from the Attica prison riots.

In the early 60's, Black Muslim inmates at Attica State Prison brought a civil rights action alleging that prison practices infringed on their religious rights. Judge Henderson exercised restraint and chose to abstain, finding it appropriate that State authorities first address those rights. The Circuit Court agreed. However, when the response by prison authorities proved slow, his ensuing order that they act quickly was heeded and the principal issues in the case were thereby resolved.¹³

It is a common occurrence in our district for the judges to be called upon to resolve questions of Indian law. The Seneca Nation and the Tuscaroras both have large reservations within the district. In Judge Henderson's case, he had to decide whether the United States had the power to sanction the taking of Seneca Nation land for a four lane highway in face of the treaty of 1774 between the Seneca Nation and the United States.

The taking was part of the Allegany reservoir project in which replacement of highways was an approved part of the project. By prior decision, the government had acquired the right to flowage easements on the reservation, but in this case the Secretary of the Army, at the request of the State of New York, had provided for the taking of land for a four lane highway instead of the two lane highway which was in place before the project began. The Seneca Nation claimed that congressional delegation of this authority to the Secretary was not clear enough. Judge Henderson's decision approving the taking was controversial and widely criticized, but approved by a two to one Court of Appeals vote.¹⁴

Those who practiced in his court enjoyed his sharp wit and irrepressible humor. Outside the courtroom, Judge Henderson was a favorite of attorneys and reporters and was always willing to sit down to explain a technical point of law to a novice reporter on the courtroom beat.

Nevertheless he insisted on courtroom decorum. When defendants in draft evasion cases called him names and refused to stand when court commenced, they were, at an appropriate time after the jury verdict, cited for contempt of court and sentenced to jail.

Judge Henderson had many interests, including trout fishing, collecting antique steam engines, and gardening. He enjoyed bird-watching and rock-hunting with his wife. When a battery of attorneys petitioned the court for injunctive relief to prevent the construction of a bridge across Lake Chautauqua, he advised the attorneys for all parties that he was a non-active member of the plaintiff Audubon Society, explaining: "Apparently, a family membership costs only five dollars more than an individual membership, and Mrs. Henderson could not pass up the bargain." When the attorneys for all parties stated that they would waive any objection, he noted the allegations of the complaint that the bridge construction would have an adverse impact on the trout in Lake Chautauqua and said: "Gentlemen, I must advise you: there are no trout in Lake Chautauqua."

It is also interesting to note that our district was one of the first to have the blessing or burden--depending upon your point of view--of having the Strike Force concept in place. In late 1967, one of the earliest Strike Force prosecutions against major underworld figures in Western New York was presided over by Judge Henderson. Only conspiracy counts under the Hobbs Act were involved in that case since there was no charge that the substantive crimes were consummated. Not

generally inclined to lecture defendants, he often said, "The sentence speaks for itself." To the five defendants in that case, the three 20 year and two 15 year sentences said much.

In some ways, Judge Henderson was an old-fashioned judge--he even made house calls. On December 12, 1968, Judge Henderson drove to the Town of Lewiston, near Niagara Falls, where he arraigned reputed mafia leader Stefano Magaddino at the 77-year-old man's bedside. Magaddino pleaded not guilty to gambling conspiracy charges during a two and one-half-minute arraignment. Magaddino, who had been named as the head of the regional Cosa Nostra, was examined by several heart specialists, all of whom agreed that he could not survive the stress of trial. Twenty months after his arrest, Judge Henderson ruled that Magaddino could not withstand the stress of trial and had only "months to live." No one would have enjoyed the irony more than Judge Henderson that Stefano Magaddino outlived him by six months.

Judge Henderson died in office on February 19, 1974, at the age of 64, when presiding at a complicated criminal conspiracy case.¹⁵

In recent years the district court bench has been comprised of myself, added as a third judge in 1967, Judge John T. Elfvin, who followed Judge Henderson in

1975, and Judge Michael Telesca, who followed Judge Burke in 1982. The activities of myself and my fellow judges now serving must await scrutiny at a later date.

However, I can say that the Western District today is both similar and different from the other districts in this circuit. Like all other districts, our caseload has greatly expanded not only in the number of cases heard, but also in the variety of cases coming before us.

Congress has covered old areas of law with new legislation and sent to us brand new problems, which our predecessors would have found strange to have before them. The attention we pay to case management, discovery disputes, procedural tangles brought on by complicated federal statutes, all would be alien to them. However, many of the issues in criminal cases, contract disputes and diversity actions would have also appeared on their calendars. On the other hand, even in the criminal field I am sure they would wonder at our emphasis on counting up the days from the time of filing of the indictment to the trial and would puzzle at the magnificent detail of RICO and other federal criminal statutes.

Today, in addition to all of the above, our district has other special problems which require careful consideration. Because of our close proximity to Canada,

we have a large number of smuggling, customs and immigration cases. These cases combined with organized crime prosecutions require that we spend a large proportion of our time trying criminal violations. Indeed, we try proportionately more criminal cases than any other district in the circuit and our ratios are similar to districts like Southern Florida and Southern California. With this press of business it is most difficult to get to the trials on our civil docket.

The civil docket is also becoming more and more complex. The Niagara River chemical industry has brought a number of important cases involving federal environmental laws. The law and the technology are complicated and difficult, and require continuous case management. In several cases, after resolution of the initial problem, the case will remain under court supervision for many years in the future.

Finally, I think you will all agree that the impact of speedy communication and travel, xerox machines and word processors has been beneficial in many respects, given this increased caseload. However, I believe that today's faster pace has deprived us of something very important to the judicial process; that is, the time for reflection, the time to become familiar with what is going on in the world about us, so that we can address the

problems of the court in a studied and careful manner, rather than under the press for statistical conformance and rapid resolution.

Although we may chafe under mounting pressures of increased caseload and procedural complexity and hope for relief, we must follow the example of the judges who have preceded us and take case assignments as they are made. We continue to do our best to see that justice is done.

FOOTNOTES

* I acknowledge with gratitude the research assistance given by Eugene M. Fahey, Esq. and my law clerks Kathleen McDonough and John Kolaga. I also appreciate the assistance given by Sally Schlearth, librarian at the Buffalo News.

- 1 Mark Goldman, The Rise and Decline of Buffalo, New York, S.D.N.Y. Press (1983), pp. 143-48.
- 2 In re Kinsman, 338 F.2d 708 (1964); cert. denied, 380 U.S. 944 (1965).
- 3 The bulk of the information concerning Judge Hazel comes from a series of newspaper articles:

 Buffalo Evening News, October 13, 1951
 (obit)
 Buffalo Evening News, June 11, 1949 (wife's
 obit)
 Buffalo Evening News, October 25, 1951
 Courier Express, October 15, 1951
- 4 Anthony Cave Brown, The Last Hero: Wild Bill Donovan, Vintage Books (1972), pp. 84-88.
- 5 United States v. Kernuth, 24 F.2d 649 (2d Cir. 1928), Karnuth v. United States, reversed, 279 U.S. 229 (1929).
- 6 Key newspaper articles of Judge Adler are:

 Buffalo Evening News, May 24, 1934 (obit)
 Buffalo Evening News, May 21, 1927
 Buffalo Evening News, May 25, 1934

- 7 Key newspaper articles on Judge Knight are:
Buffalo Evening News, June 15, 1955 (obit)
Buffalo Evening News, June 15, 1955
(editorial)
Buffalo Evening News, April 27, 1960
- 8 Key newspaper articles on Judge Morgan are:
Buffalo Evening News May 24, 1959 (obit)
Buffalo Evening News May 26, 1959
(editorial)
Courier Express August 2, 1955 (nomination)
Buffalo Evening News March 27, 1956
Courier Express March 7, 1956
- 9 Key newspaper articles on Judge Rippey are:
Rochester Times, November 5, 1936
Rochester Times, March 12, 1946
- 10 Rochester Times, May 12, 1946.
- 11 United States v. Noto, 262 F.2d 502 (2d Cir. 1958), reversed, 367 U.S. 290 (1961).
- 12 Key newspaper articles on June Burke are:
Buffalo Evening News, June 15, 1965
Buffalo Evening News, June 17, 1981
Rochester Times, October 3, 1959
Rochester Times, June 17, 1981
Buffalo Evening News, June 16, 1962
- 13 Sostre v. McGuinness, 334 F.2d 906 (2d Cir. 1964), cert. denied, 379 U.S. 901 (1965).
- 14 Seneca Nation of Indians v. United States, 338 F.2d 55 (2d Cir. 1964), cert. denied, 380 U.S. 952 (1965).
- 15 I would like to thank Bankruptcy Judge Beryl McGuire and attorney R. William Stephens for their assistance in the gathering of information about Judge Henderson.

Key newspaper articles on Judge Henderson
are:

Buffalo Evening News, February 29, 1974
Buffalo Evening News, April 25, 1978
Courier Express, August 25, 1959
Courier Express, February 20, 1974
Buffalo Evening, News February 22, 1974
Buffalo Evening, News October 2, 1959
Courier Express, October 3, 1959